

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Case No. 08-13555 (JMP)

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5 In Re:

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7 LEHMAN BROTHERS HOLDINGS, INC., et al.,
8 Debtors.

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12 United States Bankruptcy Court
13 Southern District of New York
14 One Bowling Green
15 New York, New York 10004

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18 April 26, 2012

19 10:00 AM

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22 B E F O R E:

23 HON. JAMES M. PECK

24 U.S. BANKRUPTCY JUDGE

25

1 Debtors' One Hundred Tenth Omnibus Objection to Claims (Pension
2 Claims) [Docket No. 15010]

3
4 Debtors' One Hundred Eighty-Sixth Omnibus Objection to Claims
5 (Mis classified Claims) [ECF No. 19816]

6
7 Debtors' Two Hundred Eighteenth Omnibus Objection to Disallow
8 and Expunge Certain Filed Proofs of Claim [ECF No. 20107]

9
10 Motion to Reconsider FRCP 60 or FRBP 3008 filed by William
11 Kuntz III [ECF No. 22236]

12
13 Debtors' Two Hundred Thirteenth Omnibus Objection to Disallow
14 and Expunge Certain Filed Proofs of Claim [ECF No. 20102]

15
16 Debtors' Two Hundred Fourteenth Omnibus Objection to Disallow
17 And Expunge Certain Filed Proofs of Claim [EeF No. 20103]

18
19 Debtors' Two Hundred Fifteenth Omnibus Objection to Disallow
20 and Expunge Certain Filed Proofs of Claim [EeF No. 20104]

21
22 Debtors' Two Hundred Sixteenth Omnibus Objection to Disallow
23 and Expunge Certain Filed Proofs of Claim [EeF No. 20105]

24
25 Motion of JPMorgan Chase Bank, N.A. to Strike Portions of the

1 Objection to Proofs of Claim No. 66462 Against Lehman Brothers
2 Holdings Inc. and No. 4939 Against Lehman Brothers Inc.
3 Regarding Triparty Repo-Related Losses [ECF No. 25782]
4
5 Debtors' Twenty-Eighth Omnibus Objection to Claims (Valued
6 Derivative Claims) (ECF No. 9983]
7
8 Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued
9 Derivative Claims) (EeF No. 11260]
10
11 Debtors' Sixty-Third Omnibus Objection to Claims (Valued
12 Derivative Claims) [EeF No. 11978]
13
14 Debtors' Seventy-First Omnibus Objection to Claims (Valued
15 Derivative Claims) [EeF No. 13230]
16
17 Debtors' Eighty-Fourth Omnibus Objection to Claims (Valued
18 Derivative Claims) [EeF No. 13955]
19
20 Debtors' Ninety-Second Omnibus Objection to Claims (No Blocking
21 Number LPS Claims) [ECF No. 14472]
22
23 Debtors' Ninety-Fifth Omnibus Objection to Claims (Valued
24 Derivative Claims) [ECF No. 14490]
25

1 Debtors' Ninety-Sixth Omnibus Objection to Claims (Duplicative
2 LPS Claims) rEeF No. 14491]

3

4 Debtors' Ninety-Seventh Omnibus Objection to Claims
5 (Insufficient Documentation) rEeF No. 14492]

6

7 Debtors' One Hundred Third Omnibus Objection to Claims (Valued
8 Derivative Claims) [ECF No. 15003]

9

10 Debtors' One Hundred Eleventh Omnibus Objection to Claims (No
11 Liability Claims) [ECF No. 15012]

12

13 Debtors' One Hundred Twelfth Omnibus Objection to Claims
14 (Invalid Blocking Number LPS Claims) [ECF No. 15014]

15

16 Debtors' One Hundred Seventeenth Omnibus Objection to Claims
17 (No Liability Non-Debtor Employee Claims) [ECF No. 15363]

18

19 Debtors' One Hundred Twentieth Omnibus Objection to Claims (No
20 Blocking Number LPS Claims) [ECF No. 16074]

21

22 Debtors' One Hundred Twenty-Fifth Omnibus Objection to Claims
23 (Insufficient Documentation) [ECF No. 16079]

24

25 Debtors' One Hundred Twenty-Ninth Omnibus Objection to Claims

1 (No Liability Derivatives Claims) (ECF No. 16114]

2

3 Debtors' One Hundred Thirty-Second Omnibus Objection to Claims

4 (Valued Derivative Claims) [ECF No. 16117]

5

6 Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims

7 (Misclassified Claims) [ECF No. 16867]

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9 Debtors' One Hundred Thirty-Seventh Omnibus Objection to Claims

10 (Valued Derivative Claims) [EeF No. 16860]

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12 Debtors' One Hundred Thirty-Eighth Omnibus Objection to Claims

13 (No Liability Derivatives Claims) [EeF No. 16865]

14

15 Debtors' One Hundred Fifty-Sixth Omnibus Objection to Claims

16 (No Liability Derivatives Claims) [EeF No. 17469]

17

18 Debtors' One Hundred Fifty-Ninth Omnibus Objection to Claims

19 (Invalid Blocking Number LPS Claims) [EeF No. 18407]

20

21 Debtors' One Hundred Sixtieth Omnibus Objection to Claims

22 (Settled Derivatives Claims) [EeF No. 18444] Debtors' One

23 Hundred Sixty-Third Omnibus Objection to Claims (No Liability

24 Derivatives Claims) [EeF No. 18409]

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1 Debtors' One Hundred Sixty-Second Omnibus Objection to Claims
2 (Valued Derivative Claims [EeF No. 18405]
3

4 Debtors' One Hundred Seventy-Third Omnibus Objection to Claims
5 (No Liability Employee Claims) [EeF No. 19399]
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7 Debtors' One Hundred Seventy-Seventh Omnibus Objection to
8 Claims (No Liability Non-Debtor Employee Claims) [EeF No.
9 19393]
10

11 Debtors' One Hundred Seventy-Eighth Omnibus Objection to Claims
12 (Misclassified Claims) [EeF No. 19377]
13

14 Debtors' One Hundred Seventy-Ninth Omnibus Objection to Claims
15 (No Liability Derivatives Claims) [EeF No. 19378]
16

17 Debtors' One Hundred Eighty-Second Omnibus Objection to Claims
18 (Valued Derivative Claims) [EeF No. 19398]
19

20 Debtors' One Hundred Eighty-Fifth Omnibus Objection to Claims
21 (Compound Claims) [ECF No. 19714]
22

23 Debtors' One Hundred Eighty-Eighth Omnibus Objection to Claims
24 (Duplicative LPS Claims) [ECF No. 19871J]
25

1 Debtors' One Hundred Ninety~First Omnibus Objection to Claims
2 (Valued Derivative Claims) (ECF No. 19888]

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4 Debtors' Two Hundred Thirteenth Omnibus Objection to Disallow
5 and Expunge Certain Filed Proofs of Claim [ECF No. 20102]

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7 Debtors' Two Hundred Sixteenth Omnibus Objection to Disallow
8 and Expunge Certain Filed Proofs of Claim [ECF No. 20105]

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10 Debtors' Two Hundred Seventeenth Omnibus Objection to Disallow
11 and Expunge Certain Filed Proofs of Claim [ECF No. 20106]

12
13 Debtors' Two Hundred Twenty-Eighth Omnibus Objection to Claims
14 (No Liability Derivatives Claims) [ECF No. 20886]

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16 Debtors' Two Hundred Thirty-Third Omnibus Objection to Claims
17 (Valued Derivative Claims) [ECF No. 21727]

18
19 Debtors' Two Hundred Thirty-Sixth Omnibus Objection to Claims
20 (No Liability Derivatives Claims) [ECF No. 23168]

21
22 Response of Massachusetts State College Building Authority
23 [ECF No. 24193]

24
25 Debtors' Two Hundred Fifty-Third Omnibus Objection to Claims

1 (Valued Derivative Claims) [ECF No. 24117]
2
3 Debtors' Two Hundred Fifty-Fourth Omnibus Objection to Claims
4 (Employment Related Claims) [ECF No. 25059J
5
6 Debtors' Two Hundred Fifty-Fifth Omnibus Objection to Claims
7 (No Liability Derivatives Claims) [ECF No. 24117J
8
9 Debtors' Two Hundred Fifty-Sixth Omnibus Objection to Claims
10 (Purchased Contract Claims) rECF No. 24933J
11
12 Debtors' Two Hundred Sixty-First Omnibus Objection to Claims
13 (No Guarantee Claims) [ECF No. 24995J
14
15 Debtors' Two Hundred Sixty-Sixth Omnibus Objection to Claims
16 (Valued Derivative Claims) [ECF No. 25000J
17
18 Debtors' Two Hundred Sixty-Eighth Omnibus Objection to Claims
19 (Duplicative Claims) [EeF No. 26189]
20
21 Debtors' Two Hundred Seventieth Omnibus Objection to Claims
22 (Valued Derivative Claims) [EeF No. 26324]
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24 Debtors' Two Hundred Forty-First Omnibus Objection to Claims
25 (No Liability Claims) [EeF No. 23247]

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Lehman Brothers Holdings Inc.'s and Creditors Committee's
Objection to Claim No. 67911 (the "Objection") [EeF No. 27050]

Debtors' Objection to Proof of Claim No. 66099 Filed by Syncora
Guarantee, Inc. [EeF No. 20087]

Debtors Objection to Proof of Claim Number 29702 [EeF No.
20100)

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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please.

MR. BERNSTEIN: Good morning, Your Honor, Mark Bernstein from Weil Gotshal & Manges on behalf of the Lehman Chapter 11 debtors. Before we get to the items on the agenda, given where we are on the cases and the effective date has recently passed, and the first distribution was recently made, with the Court's permission I'd like to -- I propose giving a very brief status update on the claims' reconciliation process.

THE COURT: Okay.

MR. BERNSTEIN: During these Chapter 11 cases, there have been more than 68 thousand claims filed or scheduled, asserting claims of more than \$1.3 trillion. As of April 23, 2012, there are approximately 35 thousand claims filed or scheduled, remaining on the claims register, asserting claims of approximately \$493 billion. So there's been substantial progress made reducing the amount of filed claims. The reductions result primarily as a result of various settlements that have been entered into with numerous creditors, and the filing of more than 290 omnibus objections to claims seeking to disallow, reduce and allow, or reclassify claims at this point.

A hundred and 18 of those omnibus objections are still pending with respect to at least one claim on each of those, and in the aggregate there's 1,583 claims still pending on omnibus objections in the aggregate amount of \$46 billion. In

1 total, there are approximately 10 thousand claims asserting
2 approximately \$188 billion that are, or may be disputed by the
3 debtors.

4 On April 17th, the debtors made their initial
5 distributions. The distributions were made on 23,883 claims,
6 asserted in the -- or allowed in the amount of \$303 billion in
7 connection with that distribution. So, as you can see there's
8 still a significant amount of work left to do in order to get
9 the claims register aligned with the appropriate liabilities of
10 the debtors, and as a result, with the Court's permission,
11 going forward we would request the opportunity to schedule
12 certain claims matters on the Lehman's regular omnibus hearing
13 dates, to the extent there are no other larger, complicated
14 matters on those dates.

15 THE COURT: That's fine.

16 MR. BERNSTEIN: Thank you.

17 With that, we'll turn to the agenda. We have three
18 uncontested items for this morning, and then several contested
19 items, and there's another contested item scheduled for 11
20 o'clock on a JPMorgan claim.

21 THE COURT: I have a procedural question with
22 respect to the 11 o'clock calendar in particular. It may be
23 that this won't be an issue because we may have everything
24 resolved by 11 o'clock, but assuming that the 10 o'clock
25 calendar may run past 11, is it your contemplation that we

1 would simply continue with the 10 o'clock calendar and have the
2 JPMorgan matter await the resolution of that calendar, or would
3 we take a break?

4 MR. BERNSTEIN: I -- I think it depends on where
5 things are. If it seems as if the -- the 10 o'clock matter is
6 going to require a significant longer period of time; when we
7 get to 11 o'clock perhaps it would make sense to take a break,
8 although I think the JPMorgan matter, I've been told, may take
9 up to an hour as well of argument, but if we are seem like
10 we're getting close to resolving the 10 o'clock calendar it
11 probably makes sense just to continue.

12 THE COURT: Okay. Let's just see where we are.

13 MR. BERNSTEIN: Okay.

14 The first item on the agenda is the debtors' 110th
15 omnibus objection to claims. This objection sought to disallow
16 claims that were filed based on pension obligations of LBHI --
17 there was this -- LBHI settled its obligation on its pensions
18 with the PBGC early in the case, and as a result, there has no
19 further liability for these claims. One response remained on
20 this omnibus objection filed by Doris Phillips. We have spoken
21 with Doris Phillips, and she, at this time no longer wishes to
22 pursue her response to the objection and consents to the claim
23 being disallowed. So, with that we request Your Honor grant an
24 order disallowing the claim of Doris Phillips.

25 THE COURT: It's disallowed on consent.

1 MR. BERNSTEIN: Thank you.

2 The 186th omnibus objection to claims sought to
3 reclassify certain claims that were filed as secured claims to
4 unsecured claims. There are a number of remaining claims on
5 this objection and we have been discussing them with the
6 various claimants. Most of the claims that relate -- that
7 remain on this objection were filed by Deutsche Bank, in its
8 capacity as indentured Trustee for numerous securitizations.
9 We have worked on and agreed to some additional language to the
10 order with Deutsche Bank, and I have blackline of the order, if
11 I may hand it up to Your Honor.

12 THE COURT: Please.

13 MR. BERNSTEIN: As indentured Trustee for these
14 securitizations, Deutsche Bank was granted a lien by the
15 securitization Trust over the assets in the securitizations,
16 and this language makes clear that the reclassification of the
17 claim against Lehman Brothers has no effect on the lien that
18 Deutsche Bank has on the assets of the securitization Trust or
19 any rights that they have with respect to those assets. With
20 that, we have a consensual order, and request Your Honor grant
21 the 186th omnibus objection as to the claims of Deutsche Bank.

22 THE COURT: It's granted on consent.

23 MR. BERNSTEIN: Thank you, Your Honor.

24 The last uncontested item is the debtors' 118th
25 omnibus objection to claims. This relates to certain

1 securities for which it was asserted that LBI issued a
2 guarantee of the security. This is the same subject matter
3 that would be heard on the contested calendar later today. The
4 initial objection initially sought to disallow the claims, or
5 alternatively to reclassify the claims as equity interests. In
6 this particular creditor objected to having their claim
7 disallowed, but agreed to an order reclassifying their claim as
8 an equity interest in the debtor. As a result, we've modified
9 the order to provide that their claim will only be
10 reclassified, and as such we're going forward and uncontested
11 with respect to this one particular creditor.

12 THE COURT: That objection is granted as to that
13 particular creditor, on consent.

14 MR. BERNSTEIN: Thank you.

15 The next item on the agenda is the first item on the
16 contested calendar, and that is the motion of William Kuntz III
17 to reconsider the Court's prior order and opinion disallowing
18 and expunging his claims. I believe Mr. Kuntz is in the
19 Courtroom today.

20 THE COURT: Mr. Kuntz, it's your motion.

21 MR. KUNTZ: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. KUNTZ: I'd like to say I'm happy to be back
24 here, although I left rather early. The reason for bringing
25 this motion is explained in my papers as based part on your

1 denying my evidentiary hearing, and also at the close of the
2 last hearing, as you may recall, and Mr. Weisman's not here --
3 Mr. Weisman handed up a document to Your Honor, which was
4 unmarked and uncirculated. Now that's in -- in contrast to my
5 effort at a previous part of the claims objection hearing to
6 have a document marked. I don't know what that document was.
7 I'm assuming it relates to Grand Union, whatever, and I draw
8 Your Honor's attention to my Exhibit 4, of which I faxed the
9 entire fee application of Weil Gotshal in 1998, which was paid
10 over \$400 thousand in fees in New Jersey in the Grand Union
11 case. And all this time is -- where is its escrow account? We
12 don't know anything about Grand Union. You know, why are in
13 Lehman Brothers. And, you know, I didn't bother to file the
14 full fee application with my affidavit or with the motion, but
15 I think it's pretty clear that Weil Gotshal was co-counsel, and
16 that's supported by the letter opinion of Judge Martini, Weil
17 Gotshal was co-counsel in New Jersey, in Grand Union when this
18 \$3 million escrow account went down one rabbit hole and came up
19 another rabbit hole.

20 In any event, the reason I'm bringing this motion is
21 to resolve the inconsistencies as far as Mr. Weisman handing up
22 the document, and also so I'm in a better position to proceed
23 before the appeal with Judge Reinhold.

24 I'd like to also apologize to Mr. Bernstein; I left
25 his N in a correspondence that I sent to him, and aside from

1 that there's some infirmities in their proofs of service
2 relating to facts, numbers, and so forth, but I won't bother
3 Your Honor with that.

4 THE COURT: Why are you pressing this now? I mean,
5 this decision that you're seeking to have me reconsider was
6 decided November 10 of 2010.

7 MR. KUNTZ: That's correct, Your Honor, and a --

8 THE COURT: And then --

9 MR. KUNTZ: -- motion was filed within one year, and
10 it was noticed for today.

11 THE COURT: Okay.

12 MR. KUNTZ: And --

13 THE COURT: I recognize that, but -- but why didn't
14 you move sooner?

15 MR. KUNTZ: Why did -- why did Lehman file
16 bankruptcy? Why does anybody do anything? I mean, for
17 instance, in the affidavit of service, Weil Gotshal is using
18 addresses that I gave up six years before this case even
19 commenced. You know, they -- they send out 15 or 20 express
20 mails all over the country. They sent it to my sister's house,
21 because they sent it to Lake Placid. They sent it to an
22 address on Nantucket that I invented just to show their level
23 of incompetence, and yet here we are. We don't know anything
24 about Grand Union, and Your Honor can clearly see that they
25 were co-counsel and there is knowledge that the firm has or

1 should have -- what happened to this \$3 million?

2 THE COURT: Well, I -- I don't think that anything
3 you're saying actually changes --

4 MR. KUNTZ: That's fine -- that's fine, Your Honor -

5 - THE COURT: -- changes the merits --

6 MR. KUNTZ: -- that's your impression. To me, if
7 they were co-counsel --

8 THE COURT: But --

9 MR. KUNTZ: -- in New Jersey

10 THE COURT: -- but you're not even --

11 MR. KUNTZ: -- where the money went missing --

12 THE COURT: -- you're actually interrupting me as
13 I'm in the middle --

14 MR. KUNTZ: That may be, --

15 THE COURT: -- of a sentence.

16 MR. KUNTZ: -- Your Honor. I'll sit down and let
17 you talk.

18 THE COURT: No. I'm just really proposing the kind
19 of ordinary courtesy that exists when people talk to each
20 other. Nothing -- I'm not asking you to sit down. I'm just
21 asking you to give me the courtesy of allowing me to finish my
22 sentence, without interrupting me, and I'll do the same. I
23 won't interrupt you. Is that fair?

24 MR. KUNTZ: Yes, Your Honor. I understand.

25 THE COURT: I don't see anything in your papers that

1 changes the factual record that was before me at the time that
2 I decided the decision that you're seeking to have me
3 reconsider. So my question to you is, what did I get wrong?
4 What is it that I did that you disagree with that you think I
5 should change my mind? What's the reason for that?

6 MR. KUNTZ: Your Honor has never reached the
7 decision or the fact whether this \$3 million became estate
8 funds at Lehman Brothers. Your Honor has never -- I mean, in --
9 -- to my understanding, Weil Gotshal never should have even
10 brought the claims objection. Their standing is so tainted by
11 their co-counsel relationship in New Jersey that it really
12 constitutes professional misconduct. But I'm not complaining,
13 Your Honor, their conduct. I'm complaining of the obvious
14 problems that they have, and will have in District Court, when
15 there's a decision of Judge Martini in New Jersey -- District
16 Judge Martini saying: "Weil Gotshal's co-counsel of Grand
17 Union." Weil is here saying, "We don't know anything about
18 Grand Union. We don't know anything about this missing money."
19 How, if they took \$400 thousand in fees in New Jersey in the
20 1998 case -- and that's not even touching on the 2000 Grand
21 Union bankruptcy, it's clear to me -- and Your Honor outlined
22 this -- that the level of -- how should we say -- skeleton or
23 skeletons over New Jersey that impact -- Lehman was a creditor
24 of Grand Union. So if they were co-counsel to Grand Union, and
25 they also represented Lehman, and that conflict was not really

1 exposed to Judge Winfield -- I mean -- I don't see it anywhere
2 in there fee applications -- then these are problems. And
3 they're not really -- they're problems among the bar and the
4 Court. I'm simply trying to collect on promissory notes that
5 were issued 20 years ago -- you know - \$700 million was sold --
6 and Your Honor went around and around about the Martin Act and
7 this, that, the other and the -- the terms of the escrow said,
8 that if somebody has a colorable claim to this escrow greater -
9 - and I'm being in generalities -- if my claim is greater than
10 going back into Grand Union, then they should have gone to
11 Judge Winfield and said, "Let's have an order. Let's have a
12 hearing; let's have an order." Or if Judge Winfield didn't
13 want to do it, let's go back to Judge Walsh in Delaware, who
14 set up the escrow account, which was approved under the
15 original plan of reorganization.

16 You know, because there's this question of whether
17 Lehman -- whether these are estate funds -- I've been barred by
18 the automatic stay from going ahead in Westchester County and
19 getting a judgment for four or five years now. If I'd gone and
20 sued, and Lehman, in fact, had those funds, these gentlemen
21 here -- the whole firm would have been on me like a ton of
22 bricks for violating the automatic stay. I didn't. I came
23 here, I was opposed by Weil Gotshal; I was opposed by the
24 Creditors' Committee. Their entire rationale to me is: We
25 don't know anything about Grand Union and we don't like the

1 color of Mr. Kuntz' sales because he rises to the level of some
2 knowledge that causes us concern.

3 All I'm doing is trying to get paid. And if the --
4 if the -- if the three and a half million was never Lehman
5 estate funds, then it should have gone unclaimed to the State
6 of New York, is my understanding. And if that hasn't been done
7 other. Thank you, Your Honor.

8 THE COURT: Okay.

9 MR. BERNSTEIN: I'll be brief here, Your Honor.
10 First, I'm not going to respond to any assertions by Mr. Kuntz
11 about any violations of ethics, professional responsibility by
12 Weil Gotshal. That's certainly nothing that's before the Court
13 today. Weil Gotshal was -- did represent Grand Union in one of
14 their bankruptcy cases; that's never been denied and I'm sure
15 they filed -- we filed fee apps in connection with those cases.
16 We're not talking about a claim against Weil; we're talking
17 about a claim against Lehman Brothers. And Mr. Kuntz has not
18 provided any evidence of -- of that claim that Lehman took --
19 received anything from any escrow account. He has added
20 nothing new in his motion for reconsideration that wasn't in
21 his initial papers. He's just rehashed his same fictitious
22 arguments and suppositions, and there's no basis, under any of
23 the sections of Rule 60(b) for -- for relief today. 60(b)
24 should be granted only in exceptional circumstances. It is
25 extraordinary relief. Mr. Kuntz has not met that -- that

1 standard. He cannot get over the burden -- and his motion
2 should be denied. He -- he did say that a Court hasn't made a
3 decision on whether the \$3 million dollars property of the
4 estate. Well, he hasn't provided any evidence that \$3 million
5 went to Lehman inappropriately in the Grand Union case, so I'm
6 not sure what \$3 million he's -- he's talking about, but
7 there's -- he didn't provide any evidence, and that's what the
8 Court found the first time around -- that the debtors'
9 objection flipped to the burden on Kuntz' claims, and he was
10 responsible and required to prove by a preponderance of the
11 evidence, that he had valid claims, and he did not do so, and
12 he has not added anything today that -- that changes that. So
13 his motion should be denied at this point, and happy to answer
14 any further questions Your Honor may have.

15 THE COURT: No, I don't have any questions of you.

16 MR. BERNSTEIN: Thank you.

17 THE COURT: Mr. Kuntz, do you have anything further?

18 MR. KUNTZ: In the telephone book-sized documents
19 filed in the claims objections, Weil Gotshal included the
20 Ravin, Greenberg Marks P.A. letter, Judge Winfield's order, and
21 I would refer Your Honor, which to page 3 of the letter, which
22 says -- specifically speaks about the money in the escrow
23 account. That's their exhibit; they put that in. To stand up
24 here and say: "Oh, we don't know anything about this escrow
25 account," when it was their exhibit that they obtained in New

1 Jersey is fantastic. It --

2 THE COURT: Well, I think the issue, Mr. Kuntz, is
3 not whether or not there ever was an escrow account, but some
4 nexus between the Grand Union escrow account and anything that
5 involves the Lehman estate.

6 MR. KUNTZ: Lehman had security interest in Grand
7 Union in the 1998 case, in round numbers, over \$60 million.
8 They were paid -- it's my understanding -- out of the -- out of
9 the distribution of the second case. See, Grand Union had
10 three cases. Judge Walsh had one, Judge Winfield had two and
11 three. Somewhere between two and three, the escrow account
12 went into Grand Union, out of the escrow agent or whatever, and
13 apparently ended up as a payment to Lehman on their security
14 interests at the time when Weil Gotshal was representing Grand
15 Union, and they were basically -- and I'm not sure -- I should
16 say this correctly -- they were more or less in-house counsel
17 to Lehman Brothers.

18 I mean, there's a long history of documents that I've
19 already produced that show Weil Gotshal's relationship to
20 Lehman Brothers -- obviously, you're hearing even today -- and
21 on security agreements Lehman Brothers filed in Grand Union.
22 And, I think the feeling was in New Jersey -- Judge Winfield --
23 and Your Honor is already aware of this -- Judge Winfield
24 already ordered the replacement of the bond that went missing,
25 and there was -- rather than the typical, oh out of an

1 abundance of caution, we come to Judge Winfield and ask for an
2 order out of a -- and how should we say it -- out of -- out of
3 a episode of sophistication, as I remember from the hearings
4 yesterday in London about the phone hacking -- they chose --
5 just simply Grand Union, put the money in your bank account for
6 the -- get the escrow, forget the fact that Kuntz is out there
7 -- we will run the risk that we don't put this in front of
8 Judge Winfield to have a hearing in New Jersey, because Kuntz
9 might win and he might get the money, and then we would be
10 angry that somebody got paid when we had decided that that
11 person shouldn't have been paid.

12 You know, this whole case is about interest money,
13 lending money, borrowing money and everything else. I bought
14 these promissory notes 15, 17 years ago -- I'm simply trying to
15 get paid, and I'm following the money trail. There was an
16 escrow account, which would have paid me a hundred cents on the
17 dollar. I expected a hearing in New Jersey; there was no
18 hearing in New Jersey. I've documented, I wrote Lehman
19 Brothers well in advance when this case commenced. I never got
20 a response, here I am today -- I'm -- you know, Your Honor had
21 denied an evidentiary hearing before, and I'm simply saying:
22 "Here's the documents, here's copies of my promissory notes,
23 here's copies of Judge Winfield's order," -- in their own
24 exhibit they talk about this escrow fund. If it's not funds of
25 this estate, then I shouldn't be here.

1 THE COURT: Correct.

2 MR. KUNTZ: If it's not funds of the estate. But
3 then, there should be an order from Judge Winfield saying:
4 "Mr. Kuntz, too bad. Go after the bank Trustees," -- which we
5 discussed at the prior hearing, or "here's your \$3 million, Mr.
6 Kuntz -- you -- your claims are superior." I -- see, I don't
7 understand how Lehman, as a creditor in the second bankruptcy
8 case could even reach an escrow account created under the first
9 bankruptcy case that they weren't a party to. I mean, if they
10 -- if the -- if the security agreement was filed in the second
11 bankruptcy case, the escrow sort of floated along on the top.
12 So, without a hearing or an order from Judge Winfield or from
13 Judge Walsh, the fact that the money went into the general
14 operating account, as my understand of Grand Union, and came
15 back out as a distribution to Lehman Brothers as a creditor,
16 that money is still there. That \$3 million was not sunk in the
17 bottom of the ocean, it was put in one of Lehman's bank
18 accounts, and that's basically -- the whole problem is that the
19 -- the -- rather than three years ago, saying: "Yes, there was
20 a thing -- we're going to go back over to New Jersey, we're
21 going to ask Judge Winfield to reopen Grand Union, and have a
22 hearing, whether this -- whether this -- dissolution of the
23 escrow was proper -- they've had me up here making you angry
24 for three years.

25 THE COURT: You haven't --

1 MR. KUNTZ: On the other hand, I'd like to get my
2 money so I could --

3 THE COURT: Well --

4 MR. KUNTZ: -- go to the Bahamas.

5 THE COURT: I'd like it to be clear that I've had no
6 -- you haven't been making me angry since --

7 MR. KUNTZ: Well, I appreciate that --

8 THE COURT: -- at least --

9 MR. KUNTZ: -- Your Honor.

10 THE COURT: -- November of 2010. And I don't think
11 you've ever made me angry, Mr. Kuntz. You have confused me
12 from time to time, and this is one of those times. I'll give
13 this some further consideration and take this under advisement.

14 MR. KUNTZ: If -- may I see one more thing, Your
15 Honor.

16 THE COURT: Is it relevant?

17 MR. KUNTZ: Yes.

18 If the bank Trustees, one of which U.S. Bank, which
19 is on the creditors' committee, were not AWOL, I wouldn't be
20 here.

21 THE COURT: Excuse me.

22 MR. KUNTZ: The -- the -- in the Hong Kong case --
23 the mini bond case -- I believe Your Honor's ruling was that
24 the -- the bond holders did not have standing because it was
25 the Trustee -- indentured Trustees that had the powers. The

1 two Trustees for Grand Union -- these notes. HSBC, U.S. Bank -
2 - both represented counsel in this case, have been
3 conspicuously AWOL for years. They've just decided, "we don't
4 want to hear about it; it's a de minimis amount of money -- go
5 away, goodbye."

6 THE COURT: If you have claims against them, you can
7 pursue your claims.

8 MR. KUNTZ: Thank you, Your Honor.

9 THE COURT: I'm taking this under advisement.

10 MR. FAIL: Good morning, Your Honor, Garrett Fail,
11 Weil Gotshal for Lehman Brothers. The next items on the agenda
12 are the debtors' 213th, 214th, 215th, and 216th omnibus
13 objections to claim.

14 All of the objections sought to disallow or
15 subordinate the claims based on guarantees issued by Lehman
16 Brothers Holdings, Inc. in connection with securities issued by
17 non-debtors. These are the objections that Mr. Bernstein
18 referred to earlier. In total, more than 15 hundred 80 claims
19 were subject to the objections, and of these more than 14
20 hundred and 40 were disallowed or expunged by prior orders of
21 the Court on hearings on these objections. In total,
22 approximately 146 objections were interposed and received.
23 Each of the objections opposed disallowance of the claims.
24 Only 33 by our count, Your Honor, responded to the debtors'
25 request to classify the claims as equity interests, as that

1 term is defined in the debtors' confirmed Chapter 11 plan.

2 On April 21st, Lehman filed an omnibus reply for each
3 of the omnibus objections. In the reply, Lehman withdrew its
4 request to disallow the claims for which responses had been
5 filed. The relief requested at this hearing today, Your Honor,
6 is solely to reclassify the majority of the claims for which
7 responses have been filed. And I say, majority, because this
8 hearing was -- the hearing on the objection was adjourned for
9 three claimants holding a total of ten claims.

10 Lehman believes that the reply and the modified
11 relief should resolve the bulk of the responses that were
12 received. The reply file contained responses to each of the
13 relevant procedural and substantive objections, and briefly,
14 Your Honor, Lehman believes that the objection was procedurally
15 proper. Lehman is not estopped from prosecuting the
16 objections, and there is no ambiguity as to the subordination
17 of the subordinated guarantee issued by Lehman Brothers
18 Holdings, inc.

19 There may be parties, however, that wish to be heard,
20 and I believe there are a number that are on the phone, and
21 there may be some in the Courtroom today. Unless the Court
22 prefers otherwise, I would propose going through the objections
23 in numerical order and seeing if there are any respondents that
24 wish to prosecute their objections.

25 THE COURT: There's probably no other way to deal

1 with this other than to take each party who is appearing on
2 their own or through counsel, and hear what they have to say.
3 I do have some concern that this could turn out to be a very
4 prolonged process, and I don't know whether we have sufficient
5 time to deal with it all, in which case we may need to either
6 adjourn a portion of today's hearing to this afternoon, but I
7 have other obligations starting at three o'clock, or to find
8 another day for it. But before we determine that we have a
9 serious problem of scheduling, let's just get into it.

10 MR. FAIL: Thank you, Your Honor.

11 THE COURT: I mention this because I'm a little bit
12 concerned about the procedure of scheduling something as
13 potentially massive of this on a morning calendar that also
14 includes an 11 o'clock hearing in the JPMorgan matter, and so I
15 think we have potentially tried to put too many potatoes in one
16 bag, but let's find out.

17 MR. FAIL: We're hopeful, Your Honor, that were --
18 we're limited to the 33, rather than the hundred and 46, and I
19 know that we've spoken to a number of the creditors that are
20 amongst those 33 and have reached consensus that our reply has
21 satisfied them. The only other way to proceed is if your honor
22 has --

23 THE COURT: Let's --

24 MR. FAIL: -- has made a determination as to the
25 arguments that we've --

1 THE COURT: -- let's at least find out who we have
2 in the class of continuing objectors who wish to be heard
3 today. Let's start with at least finding out whose hear, and
4 who wish --

5 MR. FAIL: Thank you, Your Honor.

6 THE COURT: -- to be heard today. Let's start with
7 at least finding out who's here and who wishes to be heard in
8 person, and then we'll find out who's present by telephone.

9 MR. HURST: Good morning, Your Honor, this is David
10 Hurst from Young Conaway Stargatt & Taylor, representing the
11 Daryani family. They have three claims, subject to the 214th
12 or --

13 THE COURT: Please speak up.

14 MR. HURST: Oh. Sorry, Your Honor. This is David
15 Hurst from Young Conaway Stargatt & Taylor, I represent the
16 Daryani family. And they have three claims, subject either to
17 the 214th omnibus or 216th omnibus.

18 THE COURT: Okay. We're just -- we're just taking
19 attendance now.

20 MR. HURST: Yep.

21 MS. WEINER: Good morning, Your Honor, my name is
22 Tally Mindy Weiner. I'm here for my Law Offices of Tally M.
23 Weiner, Esquire for Alex Wong, whose claim is subject to the
24 216th omnibus objection -- claimant in Hong Kong. And for
25 Lionel Dardo Occhione, a claimant in Argentina, whose claim is

1 subject to the 214th omnibus claim objection. Thank you.

2 MR. SULLIVAN: Your Honor, James Sullivan of Moses &
3 Singer, counsel for Datsun Investments, which is a party to the
4 213th claim objection.

5 MR. VENTURINI: On the 215th objection, my name is
6 August Venturini for creditor Lamita Jabbour.

7 MR. DASE: Good morning, Your Honor, my name is
8 Wolfgang Dase, from Flemming Zulack Williamson Zauderer,
9 representing Bank Privée, Edmond de Rothschild, with respect to
10 the 216th omnibus objection.

11 MR. SIBLEY: Good morning, Your Honor, Patrick
12 Sibley of Pryor Cashman on behalf of Bank of Valletta PLC, part
13 of the 216th omnibus objection.

14 MR. CARRION: Good morning, Your Honor, Chris
15 Carrion from WilmerHale on behalf Banque Populaire Côte d'Azur.
16 I'm here simply to join in the arguments made by the other
17 claimant here today, in connection with their responses to the
18 213th, 214th omnibus objections by debtors and also other
19 similar objections.

20 MS. UDEM: Good morning, Your Honor. Marianna Udem
21 from Neiger LLP, on behalf of Banque Safdié, now known as Leumi
22 Private Bank, on the 216th omnibus objection.

23 THE COURT: Okay. That seems to be everybody who's
24 physically present in the Courtroom. Let me ask those who are
25 participating by telephone if you could please identify

1 yourselves and who you represent, or if you're appearing pro
2 se, please just state your name.

3 MR. GRUHER: Good morning, Your Honor, Barry Gruher
4 on behalf of claimant James H. Murcia. I'm appearing in
5 connection with the debtors' omnibus objection, the 215th
6 claim.

7 MR. FLORIA: Your Honor, my is Fok --Yim-Sheung
8 Floria on debtor (indiscernible 10:39:29)--

9 THE COURT: You're -- you're going to have to speak
10 because you're not coming through loud enough to be picked up
11 by our recording equipment.

12 MR. FLORIA: Well enough, my name is Fok Yim-Sheung
13 Floria on the debtors' 43 omnibus objection, case number 6-5-0,
14 31,32, and 33 from Hong Kong.

15 THE COURT: Is there anyone else on the telephone?

16 MR. HAM: Yes, Your Honor.

17 MR. BENSON: Yes.

18 MR. BRICENO: Yes.

19 MR. BRICENO: I am Antonia Briceno. I'm calling from
20 Mexico for the case number 2-15 and the claim number is 4-9-4-
21 8-8.

22 MR. HAM: Good morning, Your Honor. My name is
23 Andres Ham. I'm (indiscernible 10:40:11)on behalf of, filing
24 also Ortiz on objection regarding the 214th omnibus objection,
25 claim number 4-7-4-5-9.

1 MR. BENSION: (indiscernible 10:40:17)

2 THE COURT: Whoever is currently speaking is not
3 being heard by anybody.

4 MR. BENSION: Hello. Sorry. Sorry. My name is
5 Alberto Bension. I representing also my son, Andreas Bension,
6 we in the 215 objection.

7 MR. ALPIZAR: Good morning, Your Honor, this is
8 David Alpizar, also calling from Mexico. I'm part of the
9 omnibus objection 215, I represented myself.

10 THE COURT: Is there anyone else?

11 MR. BRICENO: I don't if you -- I am Antonio Briceno
12 from Mexico. I am representing myself, too.

13 THE COURT: I --

14 MR. BRICENO: His name is 49-4-0-4-8-8, and we are in
15 the omnibus 215.

16 THE COURT: I think we heard from you earlier in
17 this --

18 MR. BRICENO: Oh. Oh. Okay, okay.

19 THE COURT: I only want to know if it's anybody else
20 we haven't heard from.

21 MR. COLE: Yes, Your Honor. My name is Frank Cole.
22 I'm the 213th objection. And my claim number is 37 thousand
23 200 and I'm representing myself.

24 THE COURT: Is that it? Apparently so. Okay.
25 I don't know how many of the people who are present

1 in Court through counsel and how many who are appearing by
2 telephone, in effect will be saying the same things repeatedly
3 and how many of the people who are wishing to speak will be
4 saying things that are particular to them, but I do have one
5 question, and that is, are there any facts in dispute, or is
6 this purely a question of law?

7 MR. FAIL: Your Honor, from Lehman's perspectives
8 there are -- there is no fact in dispute, with respect to the
9 relief requested.

10 MR. SULLIVAN: Your Honor, James Sullivan, counsel
11 for Datsun. One potential fact dispute -- and I've requested
12 discovery from the debtors, but they've refused to produce any
13 or provide any, is -- as you may recall from some of the other
14 cases and claims objections -- Lehman has, at various points in
15 time, issued guarantees -- although Lehman may dispute some
16 this -- but guaranteed certain obligations of certain
17 affiliates. And a fact issue is -- you know -- it potentially
18 rises as to whether or not any such guarantee exists in
19 connection with these obligations. I've made a request of the
20 debtor to represent whether or not any such guarantees exist,
21 and I'm not getting -- you know -- they've refused to provide
22 anything in writing responsive to that question. So I would
23 like an opportunity to take some limited discovery on that
24 issue to determine whether or not there's any legal basis for a
25 non-subordinated -- non-subordinated claim against Lehman

1 Brothers in connection with these claims.

2 THE COURT: My Fail.

3 MR. FAIL: Your Honor, Garrett Fail, for the record.

4 I disagree with Mr. Sullivan's characterization of
5 his previous requests. That said, Your Honor, I'm happy make a
6 representation to the Court today that the Lehman is aware of
7 no fact or circumstance or argument in law that would prevent
8 it from prosecuting its objection, which it intends to do
9 today. There is a subordinated guarantee in place, and Lehman
10 is not aware of any other guarantee, which would cover Lehman
11 Brothers UK Capital Funding for LP's obligations or Lehman
12 Brothers UK Capital Funding Five's LP's obligations from Lehman
13 Brothers Holdings Inc.

14 And Your Honor, I don't believe -- Lehman doesn't
15 believe that discovery on this or any other plan would
16 reasonably or yield any evidence that would be relevant. One
17 additional point -- Datsun's claim -- the amount of the claim,
18 just for perspective, is 237 thousand 304 dollars and 48 cents.
19 Disclosure statement -- enough, Your Honor -- or are you
20 requesting -- okay. Disclosure statement estimates for such
21 claims are 11 and a half percent, which would yield, over time,
22 would yield 27 thousand 290 dollars. I think the cost of any
23 discovery would outweigh any -- any recovery that Datsun would
24 obtain.

25 THE COURT: Okay, there is a question that occurs to

1 me that involves the adjournment of at least one of the matters
2 originally scheduled for today in reference to a partnership
3 agreement. I do not know what that's about, and I do know that
4 a call came in to chambers from a claimant requesting an
5 affiliated file -- a supplemental memorandum. I'm frankly
6 confused as to whether or not the issue giving rise to that
7 request applies only to that claimant, or applies across the
8 board to a class of claimants. Can you provide me with some
9 guidance on that?

10 MR. FAIL: Your Honor, speaking for -- for Lehman
11 Brothers, and not for the claimant -- but our understanding --
12 having spoken to the claimant, as well, is that the request
13 doesn't apply to anybody currently, because the argument being
14 asserted relates to an argument that the debtors have
15 withdrawn. Lehman is no longer prosecuting an objection at
16 this time to disallow the claims. The partnership agreement
17 and -- and clauses of it, or pieces of it that the claimant
18 wants to refer to are in response or related to -- may have
19 something to do, or may not in our perspective, have to do with
20 the basis for which Lehman sought to disallow the claims.
21 Lehman is not seeking to disallow the claims. We don't believe
22 a partnership agreement is relevant to the requests to enforce
23 the explicit, clear subordination that's in the subordinated
24 guaranteed from LBHI. The partnership agreement is not
25 relevant to this, from Lehman's perspective.

1 THE COURT: Okay.

2 Well, let's just -- let's just proceed. We have --
3 by my count -- eight -- and I may have miscounted -- attorneys
4 in Court and we have another seven or eight parties on the
5 telephone. At some point I suspect this will become
6 repetitious, but I don't know that until we start the process.
7 And so, why don't we just go in the very same order that people
8 had first identified themselves, and present your arguments,
9 and to the extent that they begin to overlap, presumably we'll
10 be able to get through this. If it becomes time consuming and
11 begins to impinge upon the 11 o'clock calendar we may have to
12 adjourn this to another date.

13 MR. HURST: Good morning, Your Honor. David Hurst
14 from Young Conaway Stargatt & Taylor, representing the Daryani
15 family. As I mentioned initially, when I first stood here, we
16 have three claims; total claims amounts about 2.1 million,
17 subject to the 214th or the 216th omnibus objections.

18 The two points I'll make out of my papers, Your
19 Honor. The first point is -- that's a subordinated guarantee
20 that's the basis for the claim objection; it's not a signed
21 document. It may seem like a minor point, but everything
22 that's going on here today is based on a document, which is not
23 signed by anybody; it's a -- could be a draft, it could be a
24 different version -- I don't really know. But this is a case
25 where a couple of words could mean a big -- could make a big

1 difference, okay. So our view is, unless the debtors can
2 produce the actual document -- the true governing document,
3 they haven't overcome the, you know, prima facie validity of
4 the claims that have been filed, including my clients' claims.
5 Second point, Your Honor:

6 Even assuming that the documents before the Court do
7 govern this -- do govern this matter, we don't think there's a
8 basis to subordinate us or to reclassify us as equity interest.
9 And I'm basing this argument -- and really on just the debtors'
10 own language. In the -- in the reply filed by the debtors,
11 they have a couple interesting sentences in there -- in the
12 matrix that was attached to the 214th omnibus reply. I'll just
13 read those into the record:

14 "The subordinated guarantee claims are being
15 characterized as equity interest for distribution purposes
16 under the plan to enforce the contractual subordination. While
17 the subordinated guarantees did not give rise to an equity
18 interest in LBHI, claimants' right to distributions are
19 subordinated to LBHI's other debt obligations."

20 You know, my reading of this, Your Honor, is that the
21 debtors are acknowledging these are not equity interests,
22 number one. And number two, they're saying they're subordinate
23 to other debt obligations. So this, indeed, is a debt
24 obligation. So there's no basis to push us into the equity
25 class -- that's Class 12 -- so you have Class 10 a,b, and c are

1 subordinated classes, Class 11 is 510(b), Class 12 is the equity
2 interests. The 510(b) claims, I assume, are being subordinated
3 to the level of equity, if there are any -- I don't know. The
4 way I read everything -- the documents -- is where we should
5 be, just based on the documents before the Court -- we should
6 be below Class 10(c) and above Class 11. And I -- again -- I
7 recognize that it's not a -- it's not helpful, because we have
8 a plan, but there's no way I think we should be in the class of
9 equity interest, based on the debtors' own admissions in their
10 papers.

11 Those are my two points. I'd just add one thing. As
12 I come to the hearing today and I talk to other claimants, it
13 does seem like there is a factual issue of whether or not
14 there's a separate guarantee out there, and indeed I believe
15 that some of the claimants that have been adjourned for a day
16 came upon these facts, and that's why the debtors probably are
17 adjourning with respect to certain claimants. I think it's
18 unfair to have everyone else be their -- you know -- well, I
19 guess, reclassified if there's sort of this factual issue out
20 there. But I think everyone deserves the opportunity to
21 investigate, because it was never raised in the debtors'
22 papers. And it may turn out it's not meaningful, but I think
23 an adjournment, so that people have a chance to investigate
24 would be appropriate.

25 THE COURT: Well, I asked earlier whether or not

1 there were any factual issues, and you're telling me that, from
2 your perspective, there are.

3 MR. HURST: Yes, and Mr. Sullivan-- that's, I
4 believe, what he was talking about. So that -- yes, I do
5 believe that's a factual issue.

6 THE COURT: And what facts would you be exploring?

7 MR. HURST: Well, the existence of a separate
8 guarantee -- that that's the -- I mean, that's the fact, and
9 apparently a number of claimants have begun this investigation,
10 have obtained a partnership agreement, and are in a much better
11 position than me, probably to articulate it to Your Honor. I'm
12 just saying, as I stand here today I feel, you know,
13 uncomfortable that these -- nothing comes up in the debtors'
14 papers, so it wasn't what I addressed when I filed my response.
15 If it's truly something else going on that I'm unaware of, you
16 know, I'd least like to have the opportunity to investigate it.

17 THE COURT: Okay. I understand that.

18 MR. HURST: Thank you, Your Honor.

19 THE COURT: Thank you.

20 Before we go to the next person, I'm just going to
21 comment generally to the people that are on the telephone. You
22 probably don't know who are, but we have heavy breather on the
23 telephone, and so I'm going to ask all of you -- and you to
24 have to acknowledge who you are -- to mute your phones or at
25 least to move the speaker away from your nose. Do we have

1 anybody else in Court to speak? You're to speak in the same
2 order in which you presented yourself before, and you look like
3 -- you look like a new face to me.

4 UNKNOWN VOICE #1: No, I think I was fourth.

5 MS. WEINER: Ah. Good morning again, Your Honor. I
6 joint Mr. Hurst in asking for an adjournment. I'd like to
7 point out something -- I'll be brief -- that occurred to me in
8 hearing the debtors' presentation, which is that they came
9 after some 15 thousand claims here, saying that they should be
10 disallowed and equitably subordinated. They're not asserting
11 that they withdraw their request for a disallowance. Just the
12 way these claim objection procedures work, Your Honor has
13 entered orders knocking out 14 thousand claims. Had people
14 filed responses, they wouldn't have disallowed, but I think it
15 is understandable, and you get it listening to people on the
16 phone, what a hardship it is to file responses on time. I'm
17 not sure what the right procedure is, but I would ask Your
18 Honor to adjourn in order to give people an opportunity to get
19 those orders withdrawn. I don't think those claims should've
20 been disallowed. Weil Gotshal is now moving forward with its
21 disallowance. Thank you, Your Honor.

22 THE COURT: Well, I hear what you're saying, but
23 what you're saying is inconsistent with the procedures that
24 have been applied in this case now for years. You're not
25 speaking on behalf of a class of unrepresented third parties

1 whose claims have all been disallowed in the last two years,
2 are you?

3 MS. WEINER: I don't know that I -- that I can, Your
4 Honor --

5 THE COURT: Right. I don't think you can --

6 MS. WEINER: I -- I should very much like to, but
7 this is a Court of Equity, and I know you are committed to a
8 clean and transparent process in this case. I think there is
9 something just fundamentally wrong with 14 thousand claims
10 getting knocked out.

11 THE COURT: As long as parties had notice and had an
12 opportunity to be heard, that's all the law requires.

13 MS. WEINER: Ah, perhaps Your Honor. I'll tell you,
14 having filed responses for parties who got very short notice,
15 because they got documents sent to them in Hong Kong and
16 Argentina -- that it's very difficult. And I can certainly
17 understand why some people did not respond. But, in any event,
18 I would ask for an adjournment. Thank you.

19 THE COURT: Okay.

20 Is there anyone else who wishes to be heard who is
21 present in Court?

22 MR. VENTURINI: Yes, Your Honor.

23 My name is August Venturini for claimant Lamita
24 Jabbour on the 215th omnibus objection. Very briefly, Your
25 Honor, there's no grounds to reclassify the guarantee

1 obligations as debt or equity interests for a number of
2 reasons. Number one is that the debtors have conceded that the
3 guarantee obligations, under the terms of the guarantee, are
4 senior to common stock. What they do try to do is they try to
5 hang onto to this pari passu language in the guarantee, which
6 says these obligations are pari passu with parity securities.
7 And in the definition of parity securities we maintain in our
8 papers is circular and vague and ambiguous, and therefore,
9 unenforceable, because it basically says that it's on a pari
10 passu basis with any other security that's pari passu with it.
11 And the debtors have not come up with any other security that
12 says it -- it's pari passu with ours, except for the other
13 guarantees -- they're all in the same boat. So, in other
14 words, there's no connection between the obligations, under the
15 guarantee, with preferred stock or any securities -- oh, I'm
16 sorry -- any common or preferred stock, which would then allow
17 the debtors to lump the guarantee obligations into the equity
18 interests as defined under the plan, because the equity
19 interests in the plan are defined as common and preferred. So
20 because there's no nexus to tie the guarantee obligations to
21 preferred stock, then there's no basis to claim that these are
22 equity interests. Now, there is certainly a claim that there's
23 subordinated guarantees and -- and the question would be, well
24 if they are subordinated they are still senior to the common
25 stock, which is clearly going to guarantee and clearly conceded

1 by debtors in this matter. I -- I would draw on my papers in
2 terms of the analysis of parity securities -- it's set forth
3 pretty well there.

4 THE COURT: What happens to these claims and,
5 assuming I accept your argument, do they end up as unclassified
6 junior claims and if so, what treatment are they entitled to?

7
8 MR. VENTURINI: Two arguments to tell Your Honor.
9 First is that we're saying that the whole subordination
10 agreement is ambiguous because it relates to the parties'
11 securities and therefore is unenforceable.

12 Secondly, or in the alternative, if the Court accepts
13 that there is a lease of subordination element but were senior
14 to common stock than there should have been some type of class
15 to account for us -- to account for our claims and those claims
16 would be before equity interests so there would have to be
17 another level, I suppose, that we would take after the main
18 creditors but before the equity interests.

19 THE COURT: I'm not sure there is anything for you
20 to take.

21 MR. VENTURINI: That's what the Debtors have told
22 us, but nevertheless, we still think that it should be superior
23 to the equity interests by the nature of the guarantee, I hold
24 a clear language of the guarantees.

25 THE COURT: All right. Thank you.

1 MR. VENTURINI: Thank you.

2 MR. DASE: Good morning, Your Honor. My name is

3 Wolfgang Dase for Banque Privée Edmond de Rothschild , the

4 216th Omnibus Objection.

5 We would like to join Mr. Hurst's request for an adjournment,

6 specifically our response incorporated by reference, the

7 arguments of Lloyd's TSB Bank, Geneva Branch, and my

8 colleagues, Lyle, granted them an adjournment and we

9 respectfully submit that the issues are identical with Lloyd's

10 and therefore the adjournment should be granted.

11 THE COURT: Okay. Thank you. But let me -- let me

12 speak with Debtors' counsel about an issue before hearing from

13 others because there are now at least three independent

14 requests for an adjournment for varying reasons, one having to

15 do with the possibly need to take some discovery or obtain some

16 information, one having to do with equitable concerns, one now

17 having to do with what I characterize as it's unfair for us to

18 go forward today while others have been granted an opportunity

19 to have some more time and we'll be going forward some other

20 date, and why do we need to do this today. And so, my

21 question, Mr. Fail, is why do we need to do this today?

22 MR. FAIL: Thank you, Your Honor. I think it was

23 fitting that we had Mr. Bernstein start this morning off with a

24 status conference regarding the number of claims that are

25 pending objection -- the objection is pending. I believe the

1 number was over 100 omnibus objections out of the 290 or so
2 that were filed remain pending with responses such as the
3 Respondents on the phone and in the courtroom today pending.
4 At some point, Your Honor, we need to move forward and clear
5 those out. There will be additional omnibus objections and
6 other individual objections coming along. As Mr. Bernstein
7 indicated. I believe there are over 10,000 claims that remain
8 subject to review and possible objection.

9 This is not the first hearing on these objections so
10 that means that parties had from between the first hearing
11 which was at least a month ago till today -- this wasn't sprung
12 on anyone -- addressing the three bases that were mentioned by
13 Your Honor just now, in reverse order if I may, objections --
14 the adjournments were granted not to hide anything from the
15 Court, not to -- not out of fear from the Debtors of where the
16 adversary -- a professional courtesy was extended to one
17 counsel -- to counsel for Lloyd's who had a personal conflict
18 and wasn't able to attend today. The Debtors had extended and
19 adjourned this hearing once before and extended a professional
20 courtesy to counsel. The fact that other counsel joined that
21 objection doesn't replace each individual counsel's or
22 creditor's obligation to represent their client and, I'm sure,
23 everyone in the party was ably -- well able to do so and the
24 arguments were set forth in someone else's pleading and, to the
25 extent that counsel wishes to prosecute them, they may today,

1 address them in the equity argument, I think, Your Honor, has
2 covered that. Notice's been provided. 30 days, I believe plus
3 three for mailing is required by the bankruptcy rules.
4 Lehman's practice for over three and one half years, or two and
5 one half years, that the Claimants' process has been going, is
6 to provide creditors with more than 30 days and we granted
7 extensions for response deadlines and so, I have no -- I'm very
8 confident that this Court and Lehman has treated creditors
9 fairly and I give no weight to the equity argument.

10 And with respect to the discovery, Mr. Sullivan made
11 a limited request this morning. He hasn't provided -- he
12 hasn't handed Your Honor -- he hasn't handed counsel, he hasn't
13 handed Lehman a discovery request that would be narrow or
14 tailored. He seemed to say he's wondering if there are any
15 other guarantees out there. It's very hard to prove a
16 negative, Your Honor, but Lehman is not aware of any other
17 guarantee other than the subordinated guarantee at issue that
18 could give rise to liability in whatever priority or fashion
19 for Lehman Brothers Holdings, Inc., so we don't believe that
20 discovery would be fruitful or yield a different result. That
21 said, the others that are joining in the request for recovery
22 haven't contacted counsel to ask for anything in advance and
23 so, I don't know what benefit we will achieve by -- by having
24 an -- additional time for an adjournment, Your Honor. The
25 costs -- the costs would certainly outweigh. I'm happy to

1 address the other arguments that were raised if there would --
2 if Your Honor wants to go through this.

3 THE COURT: Don't we have a minimum of law of the
4 case problem with respect to the treatment today of your legal
5 arguments and the responding of other similarly situated
6 Claimants to another hearing day. Just speaking
7 hypothetically, assuming I were to agree with every single one
8 of the Lehman arguments concerning this matter, that means you
9 win. And that means that, as far as the matters that have been
10 adjourned, they necessarily must lose, because there are
11 similarly situated. So, I'm just concerned from a case
12 administration perspective. I'd be interested in your views on
13 this as to how rationally we can deal with a class of claimants
14 that is diverse in number, international in character, includes
15 some represented by counsel, some pro se, some who are here to
16 observe in person, some who are simply listening on crackling
17 phone lines, how do we deal with this in a fair and reasonable
18 way so that everybody is able at the end to have an Order which
19 is then either accepted or is the subject to final appeal.

20 MR. FAIL: Your Honor, I think, the way to proceed
21 is the way that we're doing it, not to treat these as class
22 claims. There is no class claim before Your Honor. The
23 Debtors filed omnibus objections to 1,500 -- it's not 15,000 --
24 and it was 1,400 not 14,000 that were -- were expunged, just so
25 that we're clear on the record. It's a large case but it

1 should work. It's a large number, but it's not 14,000.

2 We're treating these individually, so there are
3 however many parties that are here today prosecuting their
4 objection, and I'm happy to address their arguments
5 individually. To the extent that the parties adjourned are
6 worried about law of the case, they haven't expressed that to
7 Lehman and Lehman doesn't represent them. Lehman isn't arguing
8 law of the case with respect to the objections that we're
9 passed. We are happy to address it -- each one on the merits.

10 Further, while Lehman has gathered over 1,580 claims
11 based on these two funding entities and these subordinated
12 guarantees and while Lehman has strived for efficiency, there
13 is no guarantee that there are not other guarantees, similar
14 claims out there, that will need to be objected to in the
15 future. As Mr. Bernstein indicated, there are over 10,000, I
16 believe, claims that are yet to be reconciled and there is -- I
17 cannot the possibility that one of those claims has the same
18 CUSIP embedded within it and that will need to be addressed in
19 the future, so I think, we'll have to just deal with, on a case
20 by case basis, each -- each of the claims. There is no other -
21 - there is no other practical way to proceed.

22 THE COURT: I'm not getting into the question of
23 whether or not there may be some other claimants out there.
24 I'm getting into something that's more fundamental, which is
25 just this particular group, this particular identified class,

1 not in a class action sense, but in the sense that there are
2 certain parties that are the subject of four currently pending
3 omnibus objections who have responded. Some with overlapping
4 arguments and in the case of Banque Privée and one party who
5 has almost identical positions that has gotten the benefit of
6 an adjournment, there is at least as to that example an issue
7 of, what I call, fair treatment.

8 MR. FAIL: Your Honor, if I may though, you're
9 flipping the argument that's being made. The parties were not
10 at the next hearing were the Debtors' made the arguing law of
11 the case. In that case, this conversation may be relevant.
12 Was it fair that we went forward and they shouldn't be bound
13 where they weren't a party. These are parties saying "wait,
14 someone else may do the work for me. Wait because someone else
15 may do something in the future." It's -- They are not being
16 prejudiced by going forward and having a fair and full hearing
17 today on the arguments. They are looking for the benefit of
18 something else in the future, not complaining about law of the
19 case going forward and prejudicing them.

20 THE COURT: No, I think, what they're basically
21 saying is, at least some people have said "We would like an
22 adjournment". And if it's good enough for three parties who,
23 for whatever reason had an adjournment, why isn't it good
24 enough for us. Why shouldn't this all be heard at the same
25 time instead of in parts. I have, frankly, some appreciation

1 for that argument. I'm concerned from my perspective as to
2 what I'm supposed to do today. Let's just assume for the sake
3 of argument that we set aside time this afternoon and tomorrow
4 afternoon and I'm able to get through however people are
5 currently in person and on the phone and have things to say
6 about this issue. Then what? Is it your position that I
7 should rule from the bench and say "Lehman, you win"? Or is it
8 your position that I should take it under advisement and wait
9 until I see what others have to say in a month? What am I
10 supposed to do with this, Mr. Fail?

11 MR. FAIL: There are --

12 THE COURT: I think what we have is an
13 administrative problem that we share.

14 MR. FAIL: -- I agree with that, Your Honor.

15 THE COURT: And because you brought it to Court, you
16 actually own it.

17 MR. FAIL: Yes, Your Honor. The Debtors' request
18 would be that Your Honor rule from the bench in the Debtors' --
19 in Lehman's favor. Another alternative would be as Your Honor
20 suggested to hear the parties that are present today with no
21 guarantee that they would be available at the next adjourn date
22 that everyone's schedule would be satisfied and go forward at
23 an additional hearing. In the interim though, Your Honor --

24 THE COURT: Let me tell how I think we should
25 proceed based upon where we are. I'm not going to rule today,

1 so that becomes easy. Administratively, however, it seems to
2 me that everybody who has gone to the trouble of hiring counsel
3 and having them show up today should at least the opportunity
4 today to say what they want to say. We're not going to waste
5 the day. Those that are on the telephone also will have an
6 opportunity to either choose not to say anything, or if they
7 wish to add something, to have that opportunity. But I'm not
8 deciding this question until after the last cock has crowed.
9 The way in having certain claims go to another day effectively
10 would be the default decision. There will be no decision until
11 -- there will be no decision that affects all until we've heard
12 from all. I think that's a fair way to approach this, because
13 that also gives those parties that are here today, if they need
14 some more time to ask some questions, if there are questions to
15 ask, to find out what they can find out about other guarantees
16 that may apply. I heard what you said and I accept what you
17 said, but presumably parties may want to ask that more
18 directly.

19 MR. FAIL: Certainly, Your Honor.

20 THE COURT: So let's just -- let's do the following.
21 We have an 11:00 o'clock -- it's now 11:15 -- let's take the
22 next fifteen minutes to get to 11:30 to see what we can
23 accomplish in that period of time. We'll then go to the JP
24 Morgan matter and we'll adjourn till 2:00 o'clock and the
25 parties who wish to be heard at 2:00 o'clock who haven't been

1 heard with respect to these claim objections can be heard at
2 that time, recognizing that I only have an hour this afternoon
3 for that purpose.

4 MR. FAIL: Thank you, Your Honor.

5 UNKNOWN SPEAKER TELEPHONIC: Your Honor.

6 THE COURT: We still have people in Court that wish
7 to be heard.

8 UNKNOWN SPEAKER TELEPHONIC: May I speak for the
9 people on the telephone.

10 THE COURT: We can, but -- those people who are
11 physically present in Court are at the head of the line and
12 then we'll get to the people that on the telephone.

13 MR. SIBLEY: Good morning, Your Honor, Patrick
14 Sibley again, Pryor Cashman, on behalf Bank of Valletta. My
15 client simply just wishes to join in all the arguments
16 presented today. I have nothing else to add.

17 THE COURT: Okay.

18 MR. SIBLEY: Thank you, Your Honor.

19 MR. SHANK: Your Honor, I am a new face. My client
20 is also joining in the responses to the omnibus objections. My
21 name is Ross Shank, Kasowitz Benson. My client's name is Suad
22 Salumeh (phonetic).

23 I am here continuing to join in the objection
24 including the objection -- response of the Lloyd's TSB which
25 has been adjourned.

1 MR. CARRION: Good morning, Your Honor, I'm Chris
2 Carrion, again on behalf of WilmerHale, representing Banque
3 Populaire Côte d'Azur.

4 I just wanted to reiterate that my client joins in
5 the arguments of all the claimants made today. Thank you.

6 THE COURT: Sorry, who were your clients? Banque
7 Populaire?

8 MR. CARRION: Banque Populaire.

9 MR. UDEM: Good morning, Your Honor. Marianna Udem,
10 Neiger LLP, for Banque Safdié, now known as Leumi Private Bank,
11 and I would simply like to join in the arguments already made
12 by counsel today on behalf of my client. Thank you.

13 THE COURT: Is there anyone else who is physically
14 present in Court who wishes to be heard. Okay. Begin with the
15 telephone.

16 MR. ALPIZAR: Your Honor, this is David Alpizar from
17 Mexico, and actually, we just want that we are treated like
18 everybody else in the claims. We cannot be calling every day
19 or every time, because this is no, you know, we are thousands
20 of miles away and we have a life to go with, and we just wish
21 the Court takes our petition to be treated the same as
22 everybody else in the claims and whatever we can go by or not),
23 we're not.

24 MR. BENSON: Your Honor, can I just ask for the
25 creditors to say if it's possibly to say their claim number,

1 because the names are a little bit hard to hear, if it's
2 possible.

3 MR. ALPIZAR: Yeah, my claim number is 4940481.
4 David Alpizar for Mexico.

5 MR. BENSON: Thank you.

6 THE COURT: Okay. Is there anyone else who wishes
7 to be heard is on the telephone?

8 THE COURT: Whoever is now speaking, I can tell you
9 at least I'm not hearing you.

10 MR. BENSON: Okay, sorry, Your Honor.
11 Alberto Benson, I'm on with my son Andreas, I'm for claims 47-
12 4-9-5 and 96, represented, pursuing their answer, so we'll have
13 at least our go at this case. Thank you.

14 MR. FLORIA: Your Honor --

15 THE COURT: Yes.

16 MR. FLORIA: My name. I'm number (indiscernible
17 11:18:20). The claimant's name -- Fok Yim-Sheung Floria. Case
18 number 6-5-0-3-1-6-5-0-3-2 6-5-0-3-2. This is a claim
19 relating to --

20 THE COURT: I have to break in and just say this
21 that the way this works, we have recording equipment that
22 accepts sounds. but the sounds have to be audible in order for
23 the system to work and you're not speaking loud enough or the
24 connection is not good enough for you to be heard by the
25 equipment, so you have to really speak up.

1 MR. FLORIA: Yeah, Claimant's name is Fok Yim-Sheung
2 Floria, case number 65021, 65022, and 65023 (indiscernible
3 11:19:12). In fact, for this matter, (indiscernible
4 11:19:20) about seven weeks before the deadline, September ---
5 normally it takes about one week from Hong Kong -- and from
6 Hong Kong to New York (indiscernible 11:19:25) approximately,
7 which is six days after the deadline -- four days after the
8 deadline --

9 THE COURT: Can I break in one, can I break in -- I
10 have a feeling you're talking about something completely
11 different from the issues that are before the Court today. It
12 sounds to me as if you're talking about an objection that your
13 claim was received late because of time spent in mailing.
14 That's not before me today, so while you may have an argument
15 to make, this is not the time to make it.

16 MR. FLORIA: (indiscernible 11:20:36) I think --
17 because I had (indiscernible 11:20:37) all my (indiscernible
18 11:20:38), seven weeks before the post date. But a couple of
19 weeks -- for the (indiscernible 1:20:53) I don't what I'm
20 telling (indiscernible 11:20:54) the same (indiscernible
21 11:20:55) seven weeks to (indiscernible 11:20:56) only take one
22 week --

23 THE COURT: May I suggest that rather than dedicate
24 time on the record with perhaps 35 people sitting in the
25 courtroom that you have a conversation directly with Debtors'

1 counsel to see if you can reconcile issues relating to your
2 claim and if you can't, you can find out when it will be heard.
3 It's not being heard today.

4 Is there anyone else dealing with a particular
5 omnibus objection that the Court is dealing with now?

6 MR. HAM: Yes, Your Honor, my name is Andres Ham.
7 I'm calling from Montevideo, Uruguay on behalf of Mr. --I filed
8 that onto a disc. The claim number is 47459.

9 In the first place I wanted to say that on the writ
10 filed by the Debtors' counsel, on the 25 of April, my client is
11 the least of people that who need a claim, but it says here
12 that the response was received after the initial hearing date
13 and after claimant's claim has already been expunged which is
14 not exactly accurate because my client's response was received
15 by way -- but it was somehow mistake -- submitted another
16 response. The way it's already -- have already acknowledged
17 the situation and said to us via e-mail that our response was
18 going to be considered --

19 MR. FAIL: Your Honor, if --

20 MR. HAM: -- but I wanted to -- just to make clear
21 that what he says here in the writ is not exactly accurate.

22 THE COURT: Mr. Fail, do you want to comment?

23 MR. FAIL: Yes, if I may, Your Honor. We recognize
24 that with respect to this claim 47459, a response was received.
25 It was -- the claim was, however, expunged, on the previous

1 Order by the Court. We acknowledged in the reply that we were
2 treating it as if it -- the reply had been received to the
3 extent that the Order is not granted -- to the extent that Your
4 Honor agrees with the Debtor and Lehman currently and were to
5 reclassify the claim, we would contact Epic and have the claim
6 restored to the claim's registry and reclassified as equity. To
7 the extent that Your Honor orders otherwise, we'll contact Epic
8 and arrange for that. It was inadvertently expunged rather put
9 it back as a regular claimant and move it subsequently we chose
10 to deal with it this way.

11 THE COURT: So for purposes of the pending motions,
12 even though this particular claim has been expunged, it would
13 be treated as if it has not been expunged for purposes of
14 whatever relief may apply to the class of claims affected by any
15 order I may entered.

16 MR. FAIL: I wish I could have said it that clearly,
17 yes, Your Honor.

18 MR. HAM: Thank you, Your Honor, and having said
19 that, I want to join the arguments of the claimants that have
20 been disposed today on behalf of Mr. Rafael, also.

21 THE COURT: Okay, thank you.

22 Is there anyone else who wishes to be heard on this
23 question, and, by the way, what I think I am hearing as a
24 pattern, and I can make this statement for everyone who's on
25 the phone is that everyone who is on the phone wishes to be

1 treated equally and basically adopt all of the arguments that
2 other parties have made as to why their claims should not be
3 reclassified. I believe that is probably a common theme. I
4 don't wish to put my words in your mouth, but to the extent
5 that you agree with what I've said, you can just say that and
6 we can then probably close this phase of the hearing.

7 MR. ALPIZAR: I agree, Your Honor, I'm David
8 Alpizar, case 49481.

9 MR. BENSON: I agree, Your Honor. Case 4-7-4-5-9.
10 Mr. Rafael Alonso Ortiz.

11 MR. BRICENO: Your Honor (indiscernible 11:25:49),
12 Antonio Briceno, case 4-9-4-9-7-4-8-8.

13 MR. BENSON: Alberto Benson, (indiscernible
14 11:26:00), Your Honor, case 47-49-5 and 6.

15 MR. COLE: I thank, Your Honor. My name's Frank
16 Cole. My case number is 7-0-2-0. Thank you.

17 THE COURT: Now I'm not going to assume that silence
18 is agreement. So is there anyone on the phone who wishes to
19 say something in addition to a general statement I made which
20 attempted to summarize what I believe I have been hearing from
21 everybody. Is there anything in addition -- additional, that
22 anyone wishes to add at this point?

23 MR. HAM: I would like to add one more thing, Your
24 Honor. Anyone that fails to call is not taken as a withdrawal.

25 THE COURT: I'm sorry I didn't understand that

1 point.

2 MR. HAM: Well we are in countries away and if we
3 cannot call that doesn't mean that we are withdrawing our
4 claims.

5 THE COURT: Okay, I understand.

6 Here is what I think makes sense at this point.
7 Unless there is someone in Court who wishes to speak at this
8 juncture, I'm going to treat this as, effectively, oral
9 argument with respect to the written positions that have been
10 submitted by the various parties who are affected by these four
11 omnibus objections. I'm also going to treat all of the
12 objections as if they're being made on behalf of all of the
13 objectors. I'm not going to segregate, for example, an
14 argument about ambiguity and treat that as applicable to only
15 the objector who raised that point, because in dealing with
16 this issue, effectively, with what is a legal question. And so
17 everybody is going to -- everybody who is objecting to the
18 omnibus treatment is going to be supporting one another and
19 their arguments will apply across the board. That said, I'm
20 deciding this question until we've heard from the group to be
21 heard at the omnibus hearing or whenever their claims are to be
22 heard and it is more likely than not that I will take this
23 under advisement and I need to reflect on this rather than
24 simply rule from the bench. And, during the interval between
25 this hearing and the next hearing on these objections, and Mr.

1 Fail, do we have a date?

2 MR. FAIL: Your Honor, the next claims hearing is
3 May 31. I'm not sure what's scheduled for that calendar or
4 what's on for the omnibus hearing in the interim.

5 THE COURT: Well, I don't know what arrangements
6 have been made with those attorneys who requested adjournments,
7 but I'm assuming that they'll be heard on a common date. Well
8 the parties who participated in today's hearing will have
9 notice of that date and will have an opportunity, should they
10 wish to participate to participate, either to listen or to make
11 additional comments.

12 Moreover, to the extent that any party has a desire
13 for targeted discovery of an informal nature with regard to the
14 existence of guarantees that may be applicable to these claims,
15 I presume that that will take place during the interval between
16 this hearing and the next hearing, whenever that is, so that,
17 at least at that point, we'll not have any issues of unanswered
18 questions and I will suggest, that at the next hearing, those
19 attorneys in particular who wish to make legal arguments will
20 have an opportunity to make those arguments for a last and
21 final time before this -- this is to be decided. So this will
22 be adjourned to that date to be determined. Notice will be
23 provided. We'll take a five minute break. Those who wish to
24 leave may leave. The attorneys who are involved in the JP
25 Morgan matter can come forward and I'll see you in five

1 minutes.

2 MR. FAIL: Thank you, Your Honor.

3

4 (Whereupon the Court recessed till 11:42 A.M.)

5

6 THE COURT: Be seated, good morning.

7

8 MR. NOVIKOFF: Good morning, Your Honor, Harold
9 Novikoff, Wachtell, Lipton, Rosen & Katz on behalf JP Morgan
Chase Bank.

10 We are here today on JP Morgan's Motion to Strike
11 certain of the objections contained in LBHI and its former
12 creditors' committee's objection to JP Morgan's proofs of claim
13 that covered its clearance-related extensions of credit both
14 against LBHI and against LBI. The principal issue raised in
15 that objection is whether JP Morgan liquidated the securities
16 collateral posted by LBI in a commercially reasonable matter.
17 As reflected in our materials, Your Honor, we're prepared to
18 vigorously contest that portion of the objection. We feel JP
19 Morgan, in fact, did an exemplary job of liquidating the
20 securities, but that part of the objection, Your Honor,
21 involves a number of issues of disputed fact, which I imagine
22 will be resolved at some point in due course.

23 THE COURT: What's the time table for that as far as
24 you know?

25 MR. NOVIKOFF: The -- we are in the process of

1 discovery on that. I don't -- honestly I don't know the full
2 schedule of that discovery at that moment, but that is in
3 process now.

4 THE COURT: Does the disposition of the pending
5 procedural motion in any way affect the discovery program
6 that's under way?

7 MR. NOVIKOFF: What it would do, Your Honor, is what
8 -- is the issue -- there are factual issues which are
9 extraneous, meaning that they are only related to the two
10 objections that we want to strike. Those would have to go
11 through additional discovery, if they are not stricken,
12 otherwise they will be put into the hopper as well. It could
13 extend the schedule, but I don't think that is set one way or
14 the other at the moment.

15 THE COURT: Okay.

16 MR. NOVIKOFF: The two objections that I'm referring
17 to, and these are again -- are apart from the commercial
18 reasonableness, is first that the objectors argue that the
19 clearance claim should be reduced by the value that they
20 attribute to the release by Barclay's of the law suit they had
21 brought against Behr Sterns. In addition, they say that post-
22 Petition interest should be disallowed here on an equitable
23 basis. And, we're here today on JP Morgan's Motion to Strike
24 those as legally deficient and under the applicable rules, Your
25 Honor, and case law, they should be stricken if there is no

1 question of fact or substantial question of law that might
2 allow the objection to succeed and if the Claimant is
3 prejudiced by the inclusion of the objection. In the Coach v.
4 K-Mart case cited in our materials, the District Court for the
5 Southern District of New York recognized that increased
6 litigation time and expenses are types of prejudice that would
7 qualify for Fed.R.Civ.P. 12(f), which we're asking to be
8 adopted in this case.

9 JP Morgan and the objectors would be particularly
10 prejudiced here, if these objections are not stricken now,
11 because there is substantial extraneous factual disputes that
12 relate solely to these objections. Extensive discovery time,
13 expense, would have to be undertaken to value this law suit
14 that was released by Barclay's against Behr Sterns, and it
15 relates to Behr Sterns' mortgage-related hedge funds. We're
16 talking about a law suit that was settled in 2008, will never
17 be litigated, is totally unrelated to Lehman, and in fact,
18 arose from events that occurred before JP Morgan acquired Behr
19 Sterns. If we were to proceed with the first of the two
20 objections that I referred to, we would have to determine the
21 value of that law suit. That is a whole set of discovery that
22 we would like to avoid.

23 THE COURT: Why does the number \$400 Million Dollars
24 stick in my head?

25 MR. NOVIKOFF: \$400 Million Dollars was the ad

1 damnum clause in that law suit, it's the amount that the
2 Plaintiff asserted was owed in the law suit.

3 THE COURT: So the maximum amount that would be
4 involved as to this piece of the puzzle presumably is \$400
5 Million Dollars because it's unlikely that, unless there was an
6 amendment, we're talking about a bigger number.

7 MR. NOVIKOFF: That's correct, Your Honor. But the
8 issue, of course, would be if you receive a release of a law
9 suit that was totally unresolved, the damage claim was for \$400
10 Million but what was that release actually worth, which would
11 involve and carry into all of the facts and circumstances of
12 that law suit, which are otherwise not before this Court.
13 Similarly, with respect to the post-Petition interest
14 objection, the objectors say that, based on the equities of the
15 case, that should be disallowed and the equity that they are
16 pointing to is that the -- a great deal of the cash collateral
17 posted by LBHI was not applied against the clearance claims,
18 the total of closing under the collateral disposition
19 agreement. We would have to get into something again,
20 otherwise extraneous to the entire matter, what were the facts
21 and circumstances relating to why or why not the collateral was
22 applied when it was applied.

23 THE COURT: Is there a real disputed issue of fact
24 as to whether JP Morgan Chase was oversecured at relevant
25 times?

1 MR. NOVIKOFF: Yes.

2 THE COURT: There is no disputed issue --

3 MR. NOVIKOFF: No, there is -- there is a disputed
4 issue. We still don't know whether that's true because, in
5 part, that will -- that may depend on Your Honor's rulings on
6 the portions of the adversary proceeding on which you did not
7 grant a motion to dismiss.

8 THE COURT: So, if hypothetically, 8.6 Billion
9 Dollars, just to pick a number, is removed from the collateral
10 pool, would JP Morgan be over-secured?

11 MR. NOVIKOFF: Well, even then, Your Honor, we don't
12 know the answer. First, the number now is probably 7.9
13 Billion, because \$700 Million was returned in a separate
14 settlement of the assessment management funds in Highbridge
15 (phonetic). But if 7.9 Million was removed, then we would have
16 the further question of what was the value of the securities
17 that were returned by JP Morgan to Lehman under the collateral
18 disposition agreement, because under the collateral disposition
19 agreement, to the extent that those served as collateral, we
20 need to figure out that value and we'll treat it as a secured
21 creditor to the extent of that value.

22 THE COURT: Help me with this -- how am I supposed
23 to decide as a preliminary question issues that just in
24 colloquy now you're incapable of answering. In other words,
25 why are you indisputably entitled to post-Petition interest in

1 a situation where everything is in dispute.

2 MR. NOVIKOFF: Your Honor, we're not saying we're
3 indisputably entitled to post-Petition interest until a
4 determination can be made that, in fact, we are oversecured
5 within the meaning of 506(b) --

6 THE COURT: So, is this a hypothetical Motion to
7 Strike or is this an actual Motion to Strike?

8 MR. NOVIKOFF: This is an actual Motion to Strike,
9 because if Your Honor doesn't cut off the objection that's been
10 made now, which is that you can simply disallow on equitable
11 grounds, we may all be off on a frolic and detour, taking
12 discovery and wasting the -- the resources both of JP Morgan
13 and of the estate in pursuing discovery which is entirely
14 unnecessary.

15 THE COURT: Why is this even an issue that requires
16 separate discovery? Isn't this either you have the
17 entitlement, which is what you say or you may not have the
18 entitlement, which is what they say, but why does this lead to
19 any incremental cost and expense to either party in terms of
20 the discovery efforts? Isn't that simply a legal argument that
21 could be heard later in the case?

22 MR. NOVIKOFF: No, Your Honor, because I -- it
23 involves factual issues. It's their position that JP Morgan
24 delayed in applying the cash collateral. It's our position
25 that the reason it was not delayed earlier is they did not want

1 us to apply the money there and there are -- they did not want
2 us to apply the money and we didn't apply the money as part of
3 a cooperative arrangement that ultimately led to the collateral
4 disposition agreement. And the issue of whether, you know, the
5 delay -- to use that word -- the fact that it wasn't applied to
6 the collateral disposition agreement, the issue of whether this
7 is something that JP Morgan did to, as they say in their Brief,
8 to just run up the tab, was it running up the tab or was
9 something done on a cooperative basis. In fact we were
10 encouraged not to apply the money, should that come into
11 consideration to determine any equitable considerations, if
12 equitable considerations are something that should be
13 considered in this context. Were we would like Your Honor to
14 rule is that the equitable consideration simply don't get into
15 it so we don't have to get into discovery, don't have to get
16 into a great deal of cost, expense, and delay in trying to run
17 all of those issues to ground.

18 THE COURT: Is that it?

19 MR. NOVIKOFF: That's it on -- in addressing Your
20 Honor's question.

21 THE COURT: Okay.

22 MR. NOVIKOFF: I would like to --

23 THE COURT: Well maybe this was a wonderfully
24 concise argument. I would applaud you for that.

25 MR. NOVIKOFF: I -- I can't do it that quickly, Your

1 Honor.

2 THE COURT: Okay.

3 MR. NOVIKOFF: Let me turn to their first point,
4 that is the -- that the clearance claim should be reduced for
5 the value of the settlement with Barclay's. It is their
6 contention that the deficiency claim -- the LBHI deficiency
7 claim -- should be reduced by the asserted value of the
8 settlement, the release of the law suit. That release was
9 incorporated into a settlement agreement dated December 5,
10 2008, among JP Morgan, Barclay's, and LBI's SIPA Trustee, and
11 that was approved by an Order of Your Honor dated December 22,
12 2008, in the LBI SIPA proceeding. In that, there was a
13 settlement between JP Morgan and Barclay's, relating to
14 Barclay's failure to roll a 15.8 billion Dollar Repurchasing
15 Agreement and otherwise take other steps necessary to replace
16 JP Morgan's clearance financing of LBI. It had been JP
17 Morgan's position that Barclay's had promised to do those
18 things.

19 Because of JP Morgan's -- excuse me, because of
20 Barclay's failure to replace the financing, JP Morgan had to
21 use an army of traders and other personnel to generate more
22 than 19 Billion of sales proceeds and other collections from
23 the securities collateral posted by LBI, for which JP Morgan
24 did not collect any commissions from Lehman as it acknowledged
25 by the objectors in the objection. JP Morgan incurred

1 substantial fees and expenses to recover on the claims. They
2 incurred substantial fees and expenses to defend against
3 Lehman's efforts to avoid and challenge JP Morgan's claims,
4 liens, and collection efforts, including this objection and it
5 will bear the shortfall, which Your Honor referred to, if JP
6 Morgan's ultimate recovery on the clearance claims, if there is
7 in fact a shortfall.

8 At the time of the settlement agreement, however, in
9 2008, the extent of JP Morgan's losses and expenses was unknown
10 and, indeed, is still unknown. But notwithstanding that
11 uncertainty, JP Morgan/Barclay's, decided to settle their
12 disputes through this two-way JP Morgan's/Barclay's settlement
13 included in that separate, included in that settlement
14 agreement. So in exchange for JP Morgan's release of each
15 claims against Barclay's for its failure to roll the 15.8 Repo
16 and otherwise replace the clearance financing, Barclay's
17 released its unrelated law suit against Behr Sterns with
18 respect to the Behr Sterns hedge funds. And just as the amount
19 of the losses sustained by JP Morgan was unknown at that time,
20 the value of the law suit was also unknown at that time and
21 also still remains unknown and by this Motion to Strike, we are
22 hoping to avoid the necessity or trying to figure out the value
23 of that law suit which is otherwise extraneous to this
24 objection. So sophisticated parties like JP Morgan Barclay's
25 often enter into settlements where the facts are unknown, but

1 in doing so, they take on some very important risks. So JP
2 Morgan accepted the risk that when additional facts where
3 known, it might turn out that it was undercompensated, so if in
4 fact, JP Morgan ends up underpaid by a huge amount here, then
5 in retrospect, it may turn out to have been a very unfortunate
6 settlement from JP Morgan's perspective.

7 On the other hand, Barclay's accepted the risk that
8 when additional facts were known, it might turn out to have
9 paid too much. Maybe JP Morgan suffered no shortfall and ran
10 up very little in the way of expenses. They each took on those
11 risks and move forward. People settle and move on.

12 Lehman, however, accepted no such risk in either
13 direction. LBHI was simply unaffected by this settlement and
14 had no role in this settlement. It was not a party. The
15 Lehman estates and the amounts available for other creditors
16 were in no way diminished by the settlement between JP Morgan
17 and Barclay's. LBHI wasn't a party and LBHI contributed
18 nothing to the settlement. JP Morgan alone contributed
19 valuable claims against Barclay's as part of the settlement and
20 JP Morgan alone accepted the risk that it was being
21 undercompensated as part of the deal. This was really a
22 bilateral settlement transaction. It was included in the
23 settlement agreement to which the LBI Trustee was a party, but
24 the LBI Trustee was a party to another aspect of it, which I'll
25 discuss in a moment, was not involved in portions of the

1 settlement agreement on this transaction.

2 But even though LBHI had no role in this, the
3 objectors now audaciously now argue that LBHI not JP Morgan is
4 entitled to the value that JP Morgan received under the
5 settlement. According to the objectors, it's possibly,
6 although certainly not known at this time as Your Honor
7 discussed, that JP Morgan might ultimately be fully paid by
8 Lehman on its clearance-related claims. So objectors say that
9 the value of the law suit released by Barclay's, whatever that
10 may be, is an added recovery to JP Morgan and JP Morgan can't
11 get a double recovery, even though it doesn't have any effect
12 whatsoever on the Lehman estates. Therefore, according to the
13 objectors' argument, LBI should have its obligation to JP
14 Morgan reduced by the amount of any potential excess recovery
15 that JP Morgan got from Barclay's, even though such recovery
16 would have come solely from Barclay's. LBHI had no role in it,
17 JP Morgan obtained the recovery by giving up valuable rights
18 and taking on substantial risks and that any reduction of that
19 type would simply be a total windfall to LBHI.

20 Now, we don't dispute that a creditor cannot receive
21 a double payment on its claim from a debtor, but here there is
22 no chance. I repeat, no chance, that Lehman, LBHI, and LBI
23 will be required to pay more than their contractual obligation.
24 The potential for JP Morgan to recover more, whatever that
25 potential is, is to recover more, it's -- the -- the credit

1 recovery will come from Barclay's and it exists solely because
2 JP Morgan took the risk that it might be undercompensated. It
3 also took the risk or Barclay's took the risk that it might be
4 overcompensated, but the only potential exists because JP
5 Morgan took that risk on of undercompensation by settling
6 before the full extent of its losses were ascertainable. Had
7 JP Morgan and Barclay's actually known the full amount that JP
8 Morgan's losses and expenses at the time they entered into the
9 settlement, there is no way that Barclay's would have agreed to
10 pay JP Morgan more than the amount of its losses. Again, it
11 just points out that the only reason that this exists is
12 because JP Morgan took on the risk of settling early back in
13 2008, and seeing -- and taking on the risk that it could be
14 undercompensated. So therefore the possibility that in
15 hindsight JP Morgan might recover from its settlement with
16 Barclay's more than its losses and expenses exists only because
17 it took on that risk of undercompensation.

18 Now Chapter 11 itself contemplates a similar
19 situation in which a creditor can be ultimately overcompensated
20 in hindsight for taking on a risk of being undercompensated.
21 So, for example, while it didn't happen actually in this
22 Chapter 11 case, it happens in a lot of other Chapter 11 cases
23 in which Your Honor was involved, equity and other property is
24 distributed to creditors, and in a cram-down case, is valued as
25 of the effective date of the plan under Section 1129(b)2. So

1 years after confirmation, it might turn out that the value of
2 the equities increased to the point where the senior creditor
3 actually receives more than the original amount of its claim,
4 so even if that valuation of the equity was a result of a cram-
5 down which caused junior creditors to receive nothing, they
6 don't get an adjustment years later because now the equities
7 become more valuable, and there is no refund back to the
8 estate. And I cite -- refer Your Honor to the PWS Holding
9 case, cited in our materials. The reason the senior creditor
10 gets to keep this potential greater recovery is because it took
11 on the risk that equity it received might in fact hopefully
12 turn out to be less. That's the nature of it.

13 In Chapter 11, just in settlements, you settle and
14 you move on, and that's what we do.

15 We could have drafted the settlement agreement to
16 eliminate the possibility of overcompensation without any
17 effect on the Lehman estate, so JP Morgan could have agreed, if
18 it ever got an excess amount, to simply return it to Barclay's
19 or Barclay's could have been subrogated to JP Morgan's claims
20 to the extent that JP Morgan had actually been fully paid out.
21 We didn't include provisions of that sort, maybe they should
22 have been included; they were not included, but had they been
23 included, the objectors had what -- would now have no argument
24 at all, because there would be no possibility that JP Morgan
25 would receive more than full recovery on its claims, but those

1 provisions would have had no effect on the estate. It just
2 shows that that, what we are talking about here is simply a
3 bilateral resolution between Barclay's and Lehman and the
4 estate should not now --

5 THE COURT: You mean a bilateral between Barclays
6 and JPMorgan?

7 MR. NOVIKOFF: Yes, I misspoke, Your Honor. Thank
8 you. Yes, between Barclays and JPMorgan.

9 THE COURT: Now, the parties to the applicable
10 settlement agreements included: Barclays, JPMorgan, LBI --

11 MR. NOVIKOFF: And LBI.

12 THE COURT: Was LBHI involved at all?

13 MR. NOVIKOFF: LBHI was in court.

14 THE COURT: Yes, but were they a signatory to the
15 agreement?

16 MR. NOVIKOFF: They were not a signatory to the
17 agreement, but, Your Honor's order says that the approval of
18 the agreement is binding in the Chapter 11 cases and related
19 cases.

20 THE COURT: Well, don't you have an optical problem,
21 of sorts, though?

22 I mean this is a very dense and complicated fact
23 pattern. And JPMorgan is a very significant financial player.
24 If you made what turns out in retrospect to have been a
25 fabulous deal and you end up profiting on the Lehman

1 settlement, I think it looks bad. I'm telling you I think it
2 looks bad. And I think it's going to look bad to creditors and
3 observers who are looking from outside into this case. You're
4 making a very reasoned, but highly technical argument at the
5 beginning of a process and before I have access to all the
6 background information that entered into the settlement.

7 I know a lot about this case. But a lot of what I
8 know is superficial because it's what's presented in Court.
9 All that hard work that's done outside, it's presented, it's
10 explained, it's approved; or not, as the case may be. And here
11 we're talking about something that occurred during the hot and
12 heavy, early days of the case. And if you made a deal, that in
13 retrospect, was hugely advantageous to JPMorgan, you're
14 basically asking me today to declare that the estate gets no
15 credit, under any theory, for the bilateral aspects of the
16 agreement between JPMorgan and Barclays.

17 Why should I do that now?

18 MR. NOVIKOFF: Well, actually, Your Honor, it's our
19 position that you did it in December of 2008.

20 THE COURT: Okay. I'm not sure I knew I did it, and
21 you may be right but that's a legal consequence to be drawing
22 from it, but I'm certainly not prepared to do that today.

23 If you have a good argument, you can make that good
24 argument a year from now, or whenever this is trial-ready. I
25 don't understand why I should be, in effect, cutting you free

1 of this potential exposure now, just because it's good for
2 JPMorgan.

3 MR. NOVIKOFF: Well, it's good for the estate also,
4 Your Honor.

5 THE COURT: I can't believe it is because they're
6 telling me they want very much to be able to have this little
7 "got-ya" for you.

8 MR. NOVIKOFF: If, a year from now, Your Honor
9 determines that, you know, JPMorgan was right all along when I
10 go through the careful analysis, they're right as a matter of
11 law, then we will have, at that point, simply wasted a great
12 deal of time and expense. A lot of expense, both JPMorgan and
13 the estate, in trying to come to -- no, development of all of
14 the facts and circumstances behind a lawsuit that otherwise has
15 nothing to do with the Lehman case.

16 THE COURT: It doesn't seem like that big of a deal
17 to me, frankly, Mr. Novikoff. We know it's no more than \$400
18 million. We know that financial advisors and lawyers handicap
19 the value of litigation all the time. There may be some
20 agreement. I suspect that sophisticated lawyers with some
21 financial advisors sitting in a room could figure out the fair
22 value of that case in 3 hours. At least in a range. So, let's
23 just say that's done. Is this really that big of a deal, given
24 all the other huge issues that will occupy the parties over the
25 next however many months? Because it doesn't seem like that

1 big of a deal to me. Tell me why I'm wrong.

2 MR. NOVIKOFF: Your Honor, this is a case where
3 there, frankly, was not a great deal of factual development.
4 It is -- \$400 million is still a lot of money to some people.
5 I understand in the context of Lehman, it's not the biggest
6 amount in the world, but even to an institution like JPMorgan
7 that's a lot of money. And I think it's going to involve a lot
8 more effort than Your Honor is attributing to it to get to --

9 THE COURT: Let's just say that a range of values.
10 We know it's probably no more than \$400 million --

11 MR. NOVIKOFF: Uh huh.

12 THE COURT: -- and we know it's more than zero. So,
13 it's some number -- no offense, but, so what. How much time can
14 parties actually spend pricing that imponderable? It's not
15 worth that much time and effort. It's just some number. And
16 no one's going to know for sure what that number is. So, let's
17 just say it's a black box, with a question mark in it --

18 MR. NOVIKOFF: Okay.

19 THE COURT: -- Why should anybody spend significant
20 time focused on that black box? It becomes, potentially, a
21 credit against your claim. If it ever does become a credit
22 against your claim, then we can spend a lot of time trying to
23 figure out what it is. But why do we need to spend time now
24 doing that?

25 MR. NOVIKOFF: Well, Your Honor, if what we can do

1 is put off the discovery on that until we have to figure out
2 whether we actually need to take that discover. That's
3 something I think, you know, would be interesting to us. But we
4 don't want to engage in the discovery before we find out that
5 it's actually something that's going to be meaningful.

6 THE COURT: I think the parties might reasonably
7 talk about that. Because it doesn't seem to me that it's worth
8 spending a whole lot of time trying to figure out what that is.
9 It's some number.

10 MR. NOVIKOFF: Uh huh.

11 THE COURT: It's some number that presumably experts
12 could put a range on. Why anybody should spend a lot of time
13 now trying to figure that out, eludes me. So I don't -- I
14 guess what I'm telling you is, I don't get why this is such a
15 big deal.

16 MR. NOVIKOFF: Well --

17 THE COURT: Why this piece of it is such a big deal.

18 MR. NOVIKOFF: -- because, Your Honor, I think
19 without this motion to strike and having brought this attention
20 to Your Honor, and you making that suggestion, I think we would
21 have had to have go through that discover. It's expensive,
22 time consuming and distracting, and otherwise extraneous to
23 this case. We do think -- and the reason we brought it now --
24 is we think, as a matter of law, regardless of what the number
25 is and regardless of what JPMorgan's recovery ultimately is,

1 LBHI is not entitled to a credit for it. Period. And I
2 understand that other creditors may take losses on this case
3 and somebody's going to say, gee, maybe it doesn't look quite
4 right if JPMorgan somehow received a recovery greater. It's
5 not going to appear that way because nobody will ever know, in
6 that circumstance, what the value of that lawsuit would be. We
7 brought it now because we think that as matter of law, Your
8 Honor can decide it. But the purpose of bringing it up now,
9 rather than a year from now, Your Honor is right. It was to
10 avoid -- the prejudice we are seeking to avoid is the cost of
11 this discovery. If the discovery can be put off and Your Honor
12 want to -- would prefer to decide this issue later on, that's
13 something that I think we can certainly take up.

14 THE COURT: Okay.

15 MR. NOVIKOFF: With that, let me move on to the
16 post-petition interest point.

17 As Your Honor knows, Bankruptcy Code, Section 506(b),
18 states "to the extent that a secured claim is secured by
19 collateral having a value in excess of the pre-petition claim"
20 -- and I quote -- "there shall be allowed to the holder of such
21 claim, interest on such claim" -- close quote. The United
22 States Supreme Court in *Ron Pair* said that the secured
23 creditors right to post-petition interest is unqualified. The
24 Supreme Court in *Ron Pair* describes Section 506(b) as a
25 contrary standard to pre-code cases such as *Vanston Bondholders*

1 Protective Committee v. Green that weigh equitable
2 considerations in determining whether to allow post-petition
3 interest.

4 Well, our position is that shall means shall. And
5 the objector's position is that Vanston should be the law.
6 They assert that JPMorgan's entitlement to post-petition
7 interest should be denied based on their review of the equities
8 in the situation. So the objector's have grasped onto some
9 language in Ron Pair, in that case The Supreme Court noted that
10 the plain language of Section 506(b) entitling an oversecured
11 creditor post-petition interest should be conclusive. But The
12 Supreme Court -- quoting from language in prior Supreme Court
13 cases, needed to have a narrow escape clause to avoid the
14 absurd, unintended results from a straight-forward application
15 of statutory language and included language, and I quote
16 "except in the rare cases in which the literal application of a
17 statute would presult a result, which produce (phonetic
18 12.15.20) a result demonstratively at odds with the intention
19 of the drafters" -- so, the objector's assert that this is such
20 a rare case because JPMorgan was secured by cash in its'
21 possession and this allowed the bank to use the cash and
22 generate profits from that cash. But, as Your Honor knows,
23 most cases involving a bank as a secured creditor, which is
24 probably most bankruptcy cases, involves some cash collateral.
25 Any time that a bank has a security interest in a cash deposit

1 account, or even settle-off rights in a deposit account, for
2 that matter, the bank has use of the funds and can generate
3 profits from those funds. So, there's no rarity here at all.
4 Creating an exception to 506(b)'s entitlement to post-petition
5 interest to the extent that claims are secured by cash would be
6 a massive and totally unexpected change in the law, with
7 enormous commercial and financial consequences. This is not a
8 rarity. What they are asking for would put them in the
9 debtor's lawyers hall of fame. Such a change would be totally
10 unjustifiable.

11 THE COURT: Let me ask you a question that occurs to
12 me as you are presenting this argument.

13 Does the entitlement to post-petition interest carry
14 with it an entitlement to a priority distribution with respect
15 to that interest? In other words, just because the interest
16 accrues, does that mean that it's payable; could it also be
17 subordinated? If a creditor engaged in inequitable conduct of
18 some sort, it would seem to me to be within the court's power
19 to allow the interest but to subordinate it to the point that
20 it never gets paid.

21 MR. NOVIKOFF: I would expect, Your Honor, that if a
22 secured claim was equitably subordinated that both the
23 principal and interest, and presumably post-petition interest,
24 could be subject to subordination. It's pretty unusual, but --

25 THE COURT: It could happen.

1 MR. NOVIKOFF: -- but it could happen. 506(b) deals
2 with allowance, it does not do -- it does not create, so far at
3 least as I'm aware, an immunity against equitable subordination
4 under Section 510.

5 THE COURT: Well, there are a whole bunch of legal
6 issues that are pending, both in connection with this objection
7 to claim and in connection with the litigation against JPMorgan
8 brought by the estate, that conceivably could give rise to some
9 findings. Just as a theoretical proposition that would suggest
10 that you shouldn't get the interest. Is your, what I'll call
11 preemptive objection, one that goes simply to whether or not
12 the interest is to be calculated under 506(b) or does it go to
13 entitlement to retain the accrued interest?

14 MR. NOVIKOFF: Your Honor, I don't believe that we
15 are arguing that the post-petition interest has a higher
16 priority than the pre-petition claim. So, to the extent that
17 they would all be subject to equitable subordination, that
18 would be the case. What we are saying though, is that as a
19 matter of law we are entitled to the allowance of the claim
20 under 506(b) and we'd like the objection saying that equitable
21 considerations can cut off the allowance to be stricken, so we
22 don't have to go through, again, the discovery and the further
23 distraction expense of dealing with discovery relating to the
24 facts underlying the equitable considerations to which the
25 objector's point.

1 THE COURT: I'm confused again as to the discovery
2 burden associated with something that seems to be a mere
3 calculation.

4 MR. NOVIKOFF: Your Honor, this is -- I don't
5 believe this is a mere calculation. The objector's point out,
6 correctly, that much of the LBHI cash collateral was not
7 applied against the debt until -- to the clearance debt, until
8 the closing under the collateral disposition agreement. We
9 don't disagree that that is, in fact, true. They say that fact
10 -- equitable considerations underlying that fact should
11 disallow the interest. We say, if we're going to get into
12 those equitable considerations, then we need to know all of the
13 facts as to why, in fact, the money was not applied until that
14 time. And we -- if we had to do it, we would prove that the
15 principle reason it wasn't applied is because they didn't want
16 us to apply it and that that should enter into Your Honor's
17 considerations. So that's going to get into a lot of
18 discovery, which otherwise is irrelevant to anything going on
19 in this case as to what was happening, what the discussions
20 were about that cash, what the discussions were about the
21 collateral disposition agreement, what the parties understood
22 and why in fact it wasn't paid. It'll also require then, for
23 example, to into issues where they would have to reconcile
24 their position. For example, why they say here there was
25 something wrong with the fact that JPMorgan did not apply the

1 LBHI cash collateral in -- against the clearance debt, while
2 which Your Honor knows in the adversary proceeding, they say
3 that JPMorgan violated the automatic stay, when it applied the
4 same type of cash collateral against derivatives claims. So,
5 we've got a huge number of issues which we're going to have to
6 get into to and it'll cost money, both to JPMorgan and the
7 estate, to get into, unless that part is stricken. You're
8 right, at the end of the day, if we -- if the \$280 million of
9 post-petition interest at stake is allowed as a claim, the
10 equitable subordination claim in the adversary proceeding might
11 still move that down to a subordinated claim. I'm not trying
12 to say that that's not in it, but the equitable issues there
13 are totally different equitable issues, as Your Honor knows.

14 THE COURT: Let's just say, for the sake of
15 discussion, that I agreed with you and I struck off that part
16 of the objection that relates to the calculation of post-
17 petition interest, would that, in fact, end the discovery with
18 respect to your conduct in connection with the collateral
19 disposition agreement, because isn't your conduct, all of your
20 conduct, relevant to the objection that would remain? In other
21 words, I don't understand how granting this motion to strike
22 actually limits the discovery. Because it seems to me that
23 everything you did reflects on everything that you did. It's
24 all there. It can't -- I don't see how you parse it.

25 MR. NOVIKOFF: Your Honor, I don't think there's any

1 allegations in the adversary proceeding; that anything that
2 JPMorgan or the parties who negotiated the collateral
3 disposition agreement did in the period -- and we're talking
4 about a period probably starting December of 2008 and
5 stretching into March of 2010, I don't know that anybody is
6 raising an issue that any of that conduct has anything to do
7 with the equitable subordination issues and the adversary
8 proceeding. I don't think there's anything in the complaint
9 that says that. I don't think anybody suggested that any of
10 those issues are coming up in discovery and I've never
11 understood the objectors to state that. They can correct me,
12 but I don't think those issues are relevant to anything else,
13 with all respect.

14 THE COURT: Well, What I'm trying to get at, to be
15 simplistic about it, is -- does granting the motion to strike
16 actually change the discovery associated with this objection?
17 It's not clear to me that it does.

18 MR. NOVIKOFF: Well, it's -- honestly, it's -- I'm
19 closer to it than Your Honor. It's my understanding is -- the
20 answer to your question is just, yes.

21 THE COURT: Okay, well, I'll ask the same --

22 MR. NOVIKOFF: That discovery would then be off the
23 table.

24 THE COURT: -- I'll ask the same question of the
25 estate.

1 MR. NOVIKOFF: Okay.

2 Now, I just wanted to point -- did the key case cited
3 by the objectors, which is the 7th Circuit's decision, Lapiana,
4 contains an excellent discussion of this relationship between
5 506(b), traditional defenses and equitable considerations,
6 there the bankruptcy court said that the creditor forfeited
7 its' right to post-petition interest because it had delayed in
8 collecting and applying proceeds of its' collateral. Not that
9 dissimilar from what's being alleged here. But Judge Posner,
10 in the 7th Circuit, recognized that traditional defenses like
11 estoppel or statute of limitations might act as a defense
12 against interest. But then he went on to say "we deprecate
13 flaccid invocations of equity and bankruptcy proceedings.
14 Creditors have rights; among them the right of oversecured
15 creditors to post-petition interest; and bankruptcy judges are
16 not empowered to dissolve rights in the name of equity.
17 Flexible interpretation designed to allow the judicial
18 interpolation of judicial defenses in a statute silent on
19 defenses is one thing, standardless decision making in the name
20 of equity is another" -- it then goes on, says -- "if 506(b)
21 were read merely to authorize the bankruptcy judge to award
22 post-petition interest as a matter of grace, secured creditors
23 would lack a clear idea of what their rights would be if the
24 debtor went broke. It would complicate the law needlessly by
25 requiring a searching, and often inconclusive, inquiry into the

1 relative fault of a debtor and creditor" -- this is exactly
2 that searching inquiry.

3 THE COURT: Okay. It's always good to end with a
4 Posner quote.

5 MR. NOVIKOFF: Thank you, Your Honor.

6 MS. TAGGART: Good afternoon, Your Honor. Erica
7 Taggart with Quinn Emanuel Urquhart & Sullivan on behalf of the
8 committee. I'm going to be addressing the portion of the
9 argument about the Barclays issue and then my colleague, Joe
10 Pizzurro, will be addressing the post-petition interest.

11 I want to start by discussing very briefly the law
12 because I understand Your Honor saying that the equities
13 wouldn't look very good if JPMorgan were to profit off of the
14 estate. And I understand Mr. Novikoff's position that as a
15 legal matter, though, since it doesn't hurt Lehman then it's
16 okay though, under a legal matter, for JPMorgan to get the same
17 damages from Barclays as from Lehman and that that is just a
18 risk that a creditor is allowed to take; but that doesn't
19 comport with the law. There is a rule that the 2nd Circuit
20 follows, it's called The One Satisfaction Rule and it says that
21 a plaintiff is entitled to only one satisfaction for each
22 injury. This isn't just one satisfaction from one party; it's
23 one satisfaction for many parties, for many causes of action.
24 The 2nd Circuit announced that rule in Singer v. Olympia
25 Brewing Co., 878 F.2d 596. It's been followed consistently,

1 such as in Gerber v. MTC Electronic Technologies 329 F.3d 297.
2 In there, the 2nd Circuit held a judgment must be reduced by at
3 least the amount that a prior settlement had with -- that the
4 plaintiff had with another party and is allocated to the common
5 damages. It -- there are a number of citations also in our
6 brief; I'll only mention a few more. That in the -- in re
7 Refco Case and in the Sparron Co v. Lawlor (12.27.34). What's
8 important is that even when a plaintiff has recovered for
9 common damages from a party that is not in this case, it needs
10 to be deducted or else there's a chance of a double-recovery.
11 In this case it appears that Mr. Novikoff is conceding that at
12 least some of the damages that it was asserting against
13 Barclays relate to the same clearance advances that it has now,
14 and as a matter of law, it has to have a deduction now. Lehman
15 is entitled to a deduction for whatever value JPMorgan did have
16 in its' settlement against Barclays to the extent as the same
17 damages. And -- in JPMorgan's briefs it appeared to take an
18 issue whether those damages were the same, I think Mr. Novikoff
19 is now conceding that it is going for the clearing advances. I
20 just want to point out two quotes that are also in our briefs,
21 but I think make this crystal clear. And one is actually from
22 Mr. Novikoff himself, who testified recently at deposition,
23 quote "part of the damages that would have been asserted
24 against Barclays was, in essence, the damages suffered by
25 JPMorgan as a result of Barclays failure to refinance the

1 portfolio, the, excuse me, the clearance advances" -- also
2 Steve Cutler, General Counsel for JPMorgan, testified at
3 deposition, and this was in connection negotiations for the
4 December settlement agreement, quote "the sum and substance, I
5 think, of the JPMorgan position, communicated at those
6 meetings" -- those were the meetings among Barclays, JPMorgan,
7 actually the Fed Bank of New York -- "was that we, JPMorgan,
8 believed that it was in agreement to take JPMorgan out of its'
9 financing position by Barclays and that didn't happen. We
10 ended up with fail financing; we ended up with repo-financing,
11 that we shouldn't have landed up with" -- so, we are following
12 squarely within the one satisfaction rule, there has been a
13 prior settlement. That prior settlement had at least some
14 consideration for common damages that are being asserted now
15 against Lehman and there needs to be an allowance for those
16 common damages.

17 There's another question then that Your Honor and Mr.
18 Novikoff raise and that is, okay, what is the appropriate
19 amount of the deduction? Let me suggest that this doesn't need
20 to be resolved on a motion to strike. We have had a -- we have
21 a legally defensible claim and it is clear again that at least
22 some, and I think not an insignificant amount of value, was
23 attributed to the settlement for the common damages. But I'll
24 spend just a brief amount talking about what those are. The
25 first part is easy, at least easy as a theoretical matter, and

1 then we'll talk about discovery. And that is that Barclays
2 dropped the Bear Sterns lawsuit because of the damages that
3 JPMorgan was associating with the clearing advances. In the
4 fall of 2008, JPMorgan blamed Barclays, and only Barclays, for
5 leaving JPMorgan with financing that at that time it didn't
6 know if it was going to have a deficiency, but if it did, it
7 was blaming it on Barclays for not taking over all the
8 financing in the asset process agreement. So, whatever the
9 value was to JPMorgan of that lawsuit, should be deducted
10 against its' clearing claim. Mr. Novikoff raises an issue that
11 is really a discovery issue, saying but there's just so much
12 discovery why get into it. Let me suggest that although \$400
13 million is not a lot of -- as he says it, it might not be a lot
14 of money in the Lehman case, I think it's probably worth some
15 discovery. But, I would also agree with Your Honor that it
16 doesn't mean we need to litigate the entire Bear Sterns case.
17 There's already been some testimony and discovery where
18 Barclays' negotiators have said what the value they thought was
19 associated with the case and it includes the fact that the
20 compensatory damages sought were 400 million plus punitive.
21 And the counsel of Barclays says, banks don't sue banks
22 lightly, and it has some value to JPMorgan and I think there
23 probably could be a resolution along the lines that Your Honor
24 thinks where we'd get advisors to take, you know, maybe
25 handicap the chances that there would be recovery on those

1 damages to come up with a non-insignificant amount of money.

2 There is though, one other part of potential damages
3 that I understand there's a dispute but I don't think needs to
4 be resolved on this motion to strike. And that is, is there
5 anything else of the December settlement that JP -- that Lehman
6 did not get credit for? Because although the Bear Sterns
7 lawsuit with that agreement to dismiss happened in September,
8 the issue, and I think you know a little bit about it of this
9 dispute with Barclays and JPMorgan over a \$7 billion.
10 Throughout all those negotiations, too, JPMorgan said it was
11 entitled to keep the \$7 billion. In part, because of this
12 alleged fraud that Barclays had made upon it. And there is a
13 compromise that is reached, as Mr. Novikoff says, bilaterally
14 between JPMorgan and Barclays, resulting in a payment from
15 JPMorgan in securities and also cash, not worth \$7 billion to
16 resolve that. JPMorgan says in its' reply that "Lehman, don't
17 worry, you got all the credit that you were supposed to get for
18 that settlement and you go dollar for dollar credit for the \$7
19 billion" -- I would just suggest that it's a bit premature to
20 decide that. We have not said -- heard, for example, and
21 gotten discovery on, where JPMorgan got the cash payments that
22 was given to Barclays, it could be that they liquidated
23 securities that were not supposed go over. As part of this
24 general clearing claim we will be getting a further accounting
25 of how the clearing claim broke down and I would just suggest,

1 at this point, to the extent that there is additional
2 consideration that has not been given credit to Lehman
3 Brothers, that was gotten from Barclays about common damages,
4 we would be entitled to that. I can't tell on the record now
5 whether that is any more than the Bear Sterns lawsuit. But we
6 should be entitled to discovery, in part because of that actual
7 Steve Cutler quote about the -- JPMorgan's position being that
8 they caused the clearing advances. That was in negotiations
9 for the December settlement agreement and it's just not clear
10 that there was (wasn't? 12.33.29) additional compensation.
11 But, at the very least, we have gotten past the standard for
12 motion to strike, which is a very high one, as you know. There
13 has to be no question of fact to allow the defense to succeed.
14 No substantial question of law to have allowed the defense to
15 succeed and the plaintiff must be prejudice by inclusion of the
16 defense. We're just saying, at this point, that JPMorgan is
17 only entitled to one satisfaction of its' claim, whether it be
18 from Barclays or Lehman, and so, to the extent there has been
19 compensation for those single damages. We will resolve it
20 later but it should be taken away from the eventual claim.

21 Thank Your Honor.

22 THE COURT: Thank you.

23 MR. PIZZURRO: Good afternoon, Your Honor. Joseph
24 Pizzurro, Curtis Mallet-Prevost Colt & Mosle for the Lehman
25 Estate. And I'm going to address that portion of the motion to

1 strike that deals with the interest.

2 Let me make something clear from the outset. I want
3 to clarify that as is in our papers, the argument that we have
4 made here is not simply based on equitable principles, although
5 it, in part, is and I will address that. But, as we have said
6 in our papers, the conduct of JPMorgan in these circumstances
7 as we've alleged it, amounts to JPMorgan having paid itself on
8 these claims. Indeed, prior to the time the claims even arose.
9 And that, therefore, 506(b) simply does not apply at all. And
10 this is not a case -- the ordinary case where a bank is holding
11 onto cash as collateral in a lien account. More technically
12 correct, has a security interest in the account. This is a
13 case where JPMorgan, having had 1 lien on an account, swept
14 those funds out of that account, put those funds into its' own
15 general ledger account and, as we have alleged, in the
16 collateral case, as a result, lost its' lien and lost its'
17 status as a secured creditor. And that's a claim which, Your
18 Honor, has recently held that we are entitled to pursue and
19 develop the facts on that, and survives as a matter of law.
20 Now, we would contend, Your Honor, that if there's no logical
21 consistency between a finding that 506(b) would apply to
22 JPMorgan in these circumstances, and the possibility that
23 JPMorgan lost its' lien as a result of its' conduct in sweeping
24 those funds out of the account. Because once those funds left
25 the account as we have alleged, and as Your Honor has held that

1 we have an opportunity to prove, they were no longer collateral
2 and they were no longer proceeds of collateral, if we're
3 correct. And if they weren't collateral, then they could only
4 be either our money, which clearly that was not the case or
5 JPMorgan took the funds, treated those funds as its' own money,
6 effectively paying itself before a claim even arose. Before
7 exposures even existed. Before there was an issue with whether
8 they would've violated the automatic stay or not because the
9 claim had not -- there had been no claim filed, no bankruptcy
10 had been filed. Now that is a set of facts which is imbedded
11 in the claims objection with respect to the entitlements of the
12 interest, as it is embedded in the claim that we've asserted in
13 the collateral case. And to grant a motion to strike at this
14 stage is clearly unwarranted as a matter of law. Let me point
15 out that in the papers, JPMorgan has never refuted the
16 assertion that they effectively treated this money as their own
17 once they swept it out of that account. So, they had the
18 money. They paid themselves, or put themselves into a position
19 where they would be paid. There was no claim, there is not
20 entitlement to interest. 506(b) simply does not apply as a
21 matter of law. But let's assume, and get very quickly to the
22 equitable argument, that 506(b) does apply and they have an
23 entitlement, potentially as an oversecured creditor. First of
24 all, as we did point out in our papers, we totally agree with
25 Your Honor, it's not ripe for decision now, they may or may not

1 end up having oversecured status, which means they may or may
2 not have a right to interest or a portion of the interest that
3 they are claiming. More than that though, we're troubled by
4 the argument that JPMorgan makes, based on The Supreme Court
5 decision in *Ron Pair*. Because JPMorgan suggests that the
6 language of The Supreme Court where it held that the right of
7 an oversecured creditor to pre-petition interest is
8 unqualified. It's tantamount to The Supreme Court having held
9 that it is absolute and that was not anything that the Court
10 was talking about or held. The issue before the Court in *Ron*
11 *Pair* was whether or not a creditor that was oversecured because
12 it had a non-consensual lien was entitled to pre-petition
13 interest, and that question hinged on whether or not the right
14 to interest, in the sentence of the statute, was qualified by
15 the language dealing with "reasonable, fees, costs or charges
16 provided for under the agreement under which such claims arose"
17 -- and what The Supreme Court held in parsing the statute,
18 doing the judicial equivalent of diagramming the sentence, was
19 to say because of the placement of the comma in the sentence,
20 it was clear that the entitlement to pre-judgment interest was
21 unqualified by this subordinate clause. Not unqualified in the
22 terms that it was absolute, not unqualified in terms that
23 equitable considerations could not be taken into account as to
24 whether and the extent to which interest is allowed. It's
25 simply unqualified by the existence of an agreement, and that

1 had to be decided because, of course, in a non-consensual lien
2 situation, if the entitlement to interest was qualified by
3 agreement, in the absence of an agreement, that oversecured
4 creditor is not entitled to interest. That's the law issue
5 that The Supreme Court held and that's all that Ron Pair stands
6 for. And -- the cases that come after it, including the
7 Lapiana case, Judge Posner's decision, recognized that there
8 are circumstances in which equitable considerations can result
9 in the tolling or elimination of an oversecured creditor's
10 right to interest, pre-petitioned interest. And we've asserted
11 here, Your Honor, that the circumstances of this case, where
12 JPMorgan waited 18 months, holding onto that cash, having full
13 use of the property as its' own, being able to make money on
14 Lehman's money and yet, charge Lehman's interest is completely
15 inequitable, and there are, as Mr. Novikoff said, there may be
16 fact questions embedded in that, but that's no reason why there
17 ought to be a motion to strike. To argue that they are
18 entitled as a matter of law to their interest, regardless of
19 equitable concerns, is simply not the case. That's not the
20 law.

21 If Your Honor has any questions.

22 THE COURT: I don't, thank you.

23 MR. NOVIKOFF: Can I respond briefly, Your Honor?

24 THE COURT: Of course.

25 MR. NOVIKOFF: Thank you.

1 First, with respect to the Barclay settlement issue,
2 the objectors refer to, in their papers and Ms. Taggart today,
3 to cases in which joint and several obligors are entitled to a
4 credit when another joint and several obligor makes a payment
5 on a debt for which they are all liable. That's the 2nd
6 Circuit Rule, we're not challenging that rule. But Barclays was
7 not joint and severally liable with LBI and LBHI. LBI and LBHI
8 were jointly and severally contractually liable for the debt,
9 the extensions of credit to LBI. But Barclays was only liable
10 for the consequences of its' own breach of its' promise. So,
11 if JPMorgan ultimately sustains a shortfall in recovering from
12 LBI and LBHI, then Barclays, in our view, would have been
13 responsible for that shortfall. That would have been only
14 after LBI and LBHI failed to satisfy their obligations. And
15 so, Barclays liability for the shortfall would be measured by
16 the amount that LBI and LBHI paid, or the value of the
17 collateral that got used, to satisfy that debt. But that
18 doesn't mean that the converse is true. It doesn't mean that
19 settlement value from Barclays to JPMorgan in any way reduces
20 LBI's and LBHI's contractual obligation on their debt. Of
21 course it doesn't. Just as Lehman would not have been entitled
22 to a contribution payment from Barclays because it paid its'
23 contractual debt to JPMorgan. They've twisted it around; this
24 is not a joint & several case, and all those cases that they've
25 cited, in which they have joint tortfeasors challenging

1 settlements that don't have a proper judgment reduction in it
2 are simply inapposite. This is not a joint and several
3 situation, it flows in one direction, not the other. Also, Ms.
4 Taggart is raising an issue which it's really inconceivable to
5 me exists. But on the evening before -- September 18, the
6 evening before, or possibly the wee hours of the same day, that
7 Your Honor approved the sale of most of LBI's business to
8 Barclays. As Your Honor knows, it was this \$45 billion pre-
9 sale of a portfolio of securities to Barclays for \$45 billion
10 in cash. As Your Honor, I believe, is aware, before DTTC and
11 Fed Wire closed the evening of the eighteenth, securities
12 valued at roughly \$42 billion moved but not the \$49 billion,
13 which they thought. So JPMorgan advanced \$7 billion and it got
14 put into a cash collateral account for Barclays. So they had
15 roughly \$7 billion valued of securities, which still remained
16 with LBI and that morning the \$7 billion of cash also moved in.
17 That's the disputed cash. It's recited in the settlement
18 agreement. The estate has had materials showing the deduction
19 of that cash, literally, for years. I don't think there's any
20 dispute from anybody about what that cash is and for a dispute
21 to be raised at this point strikes me a very odd and really
22 questionable. And that's what the dispute was that was
23 settled; the \$7 billion of cash remained with LBI and got
24 applied to the debt; and the securities, which were supposed to
25 have been transferred over, got transferred over or that

1 because some of them had been liquidated, there was a cash
2 adjustment that also went over. That was the deal. That was
3 the deal, wasn't more complicated than that, there's not a lot
4 of mystery about the \$7 billion. It was cash that was advanced
5 and the next morning moved in, and they got the full credit for
6 the \$7 billion so I don't know that there's some other issue
7 lurking out there.

8 I wanted to also respond to Mr. Pizzurro's argument
9 on 506(b). The position that JPMorgan paid itself with the
10 cash sweep is totally inconsistent with the position that the
11 objectors have taken, although in this case as plaintiffs, same
12 two parties, in the adversary proceeding. In the adversary
13 proceeding, as Your Honor knows, in one of the -- a couple of
14 the counts, which were -- have not been dismissed, they argued
15 that as a result of the cash sweep, the cash was moved into a
16 collateral account but JPMorgan did not, either have a security
17 interest in, or was not perfected in that account and, as a
18 result, in their position, as I understand it in the adversary
19 proceeding, that JPMorgan lost its lien and, therefore the
20 money should be returned to LBHI. Not that it should be
21 treated as paid, but that it should be treated as returned.
22 They really have to come up with what is their story on this.
23 I understand people can allege or can assert different legal
24 theories, but they really shouldn't be asserting different
25 factual theories. And either we paid ourselves or we didn't

1 pay ourselves. Now, with respect to The Supreme Court's
2 decision in Ron Pair, very important case. I would have to
3 tell Mr. Pizzurro what I often have to tell younger lawyers,
4 and sometimes not so young lawyers in my forum --

5 THE COURT: Apparently, you're telling a not-so-
6 young lawyer something right now.

7 MR. NOVIKOFF: I hope he's younger than me, I'm not
8 really sure. We'll discuss that later. But my advice is, and
9 it's free and I won't charge you for it, is keep reading.
10 After the unqualified language, the Court goes into discussion
11 and it talks about the Vanston case and it says that 506(b) is
12 a contrary standard and Vanston's no longer good law; you don't
13 apply equitable considerations anymore in 506(b) cases. So,
14 while I understand his point about the use of the term
15 unqualified, Supreme Court keeps on talking and it's there.
16 And in the Lapiana case, Judge Posner did acknowledge that
17 traditional defense is continued to apply to interest and we're
18 not disagreeing with that. But the objectors here have not
19 asserted that any traditional defense applies and I don't think
20 they can. They certainly haven't tried and what they are
21 trying to do is come up with an equitable consideration, which
22 Judge Posner, I'm going to ask -- end with another Judge Posner
23 quote. He referred to --

24 THE COURT: A short one, I hope.

25 MR. NOVIKOFF: Excuse me?

1 THE COURT: A very short one.

2 MR. NOVIKOFF: It's a very short one. He referred to
3 it as a "watered-down version of equitable estoppel" -- that's
4 what their trying to do and he wouldn't accept it and Your
5 Honor shouldn't accept it.

6 THE COURT: Okay.

7 MR. NOVIKOFF: Thank you, Your Honor.

8 THE COURT: I'm going to take this under advisement
9 and thanks for the argument. You'll hear from us when we've
10 made a decision. We're adjourned.

11 MR. NOVIKOFF: Thank you, Your Honor.

12 MR. PIZZURRO: Thank you, Your Honor.

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15 (Whereupon these proceedings were concluded at 12:49 PM)

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I N D E X

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C E R T I F I C A T I O N

We, Petra Garthwait, Michelle George, Don Cohen, certify that
the foregoing transcript is a true and accurate record of the
proceedings.

Petra Garthwait

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